

GAHC010276842023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./4462/2023

SHAHJAMAL SK AND 2 ORS
S/O ABDUR RAHMAN R/O VILL. BORO CHEDAMARI P.S SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR ASSAM

2: ZIADUR RAHMAN
S/O SHAHJAMAL SK R/O VILL. BORO CHEDAMARI P.S SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR ASSAM

3: MOHIBUL ISLAM
S/O SHAHJAMAL SK R/O VILL. BORO CHEDAMARI P.S SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. K M HASSAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

02.02.2024

Heard Mr. K.M. Hassan, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Addl. Public Prosecutor, appearing for the State of Assam.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 for granting of regular bail to the accused / petitioners, namely, (i) Shahjamal Sk, (ii) Ziadur Rahman and (iii) Mohibul Islam who were arrested on 21.11.2023 in connection with South Salmara P.S. Case No. 334/2023 registered under Sections 147/342/325/326/307/373 of the IPC in connection with GR Case No. 1023/23.

The allegation in the FIR is that the accused / petitioners have assaulted the son of the informant.

Mr K.M. Hassan, learned counsel for the petitioners submits that the accused / petitioners are innocent persons and no way connected with the alleged offence and that there are no materials to implicate the accused / petitioners for the offence alleged. He further submits that the informant has lodged a false case against the accused / petitioners and the police on suspicion has arrested the accused / petitioners.

He further submits that the actual fact of the case is that on 19.11.2023 at about 11.30 after attending nature's call, when the wife and daughter of the accused/petitioner no. 1 retired to their respective beds, then the son of the informant entered into the bedroom of the daughter / niece of the accused / petitioner and gagged her mouth with cloth and with the threat to kill her with knife committed rape upon her. The daughter/niece of the accused / petitioners somehow freed herself and managed to raise alarm and after hearing her hue and cry, the accused /petitioners entered her bedroom and caught the son of the informant red-handed. Thereupon the informant was called, and everything was explained to him, whereupon the informant admitted the fault of his son and assured not to repeat such act in future and took away his son in a

physically fit and fine condition in presence of some village elderly people and some of them are the member of the Village Defense Party (VDP). The informant in connection to the said incident on 20.11.2023 at 1.30 Am executed an agreement in the presence of some witnesses which transpire the actual fact of the case and the illegal act done by his son.

Mr. P. Borthakur, learned Addl. Public Prosecutor, Assam on the other hand strongly opposes the prayer for bail. He submits on the basis of the Case Diary, specially relying on the Injury Report that the victim has sustained grievous injury in his left hand.

I have considered the submissions made at the bar and have perused the materials available on record. It appears that the petitioners have been languishing in jail since last 73 days. It further appears that the investigation has substantially progressed. The statement of the witnesses have already been recorded under Section 161 of the Cr.P.C.

Considering the length of detention of the petitioners and also the totality of the matter, this Court is of the opinion that further detention is not perhaps required.

For the aforesaid reasons, the petitioners namely, (i) Shahjamal Sk, (ii) Ziadur Rahman and (iii) Mohibul Islam are allowed to go on bail of Rs. 30000/- (Rupees Thirty Thousand) each with one surety of like amount to the satisfaction of the learned CJM, South Salmara Mankachar subject to following conditions.

- (i) That the petitioners shall cooperate with the investigation.

(ii) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case so as to dissuade such person from disclosing such facts to the Court or to the any Police Officer.

With the above observation, this bail application is disposed of.

JUDGE

Comparing Assistant