

GAHC010278632023



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

Case No. : AB/4150/2023

HAFIZUR RAHMAN AND ANR
S/O MOHAMMAD ALI
R/O VILL- BADLA PATHAR
P.S. NAGARBERA, DIST. KAMRUP, ASSAM

2: MOHAMMAD ALI
S/O LATE OSMAN GONI
R/O VILL- BADLA PATHAR
P.S. NAGARBERA
DIST. KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:NUR ISLAM
S/O LATE MAJAM ALI
R/O VILL- BADLA PATHAR

P.S. NAGARBERA
DIST. KAMRUP
ASSA

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

01.02.2024

Heard Mr. N.J. Dutta, learned counsel for the petitioners. Also heard Ms. SH Borah, learned APP for the State.

2. By this second application, the petitioners is praying for pre-arrest bail under section 438 Cr.P.C. in connection with Nagarbera PS case no.41/2023 under sections 304/34 IPC. The previous application was rejected by order dated 17.08.2023 passed in AB no.1043/2023.

3. The learned counsel for the petitioners has submitted that the petitioners have denied that they had administered any injection to the deceased in their pharmacy. It is also submitted that at the relevant time, the petitioner no.1 was not in the pharmacy and when he came back to his pharmacy, he saw that one person was lying there in the patient bed in their pharmacy in an unconscious state and thereafter, the family members of the victim came and took the victim away. It is further submitted that there was an undue delay in lodging of the FIR, which was lodged after one day.

4. It was further submitted that the petitioners have filed an additional affidavit on 25.01.2024 to bring on record that after being granted interim bail by order dated 12.04.2023, passed in AB no.1043/2023, the petitioner no.1 had appeared before the I.O. of the case on 15.04.2023 along with his father and two bailors and it is submitted that though the I.O. had accepted the certified copy of the said order. However, the statement of the petitioner no.1 was not recorded. Hence, it is submitted that the petitioners are not a flight risk.

5. The learned APP has opposed the prayer for bail and has submitted that no new circumstances have come out in the second pre-arrest bail

application and therefore, it is submitted that as one person had died because an injection was administered by the petitioner no.1 in the pharmacy of the petitioner no.2 though he was not a qualified pharmacist and therefore, the privilege of pre-arrest bail may not be granted to the petitioners.

6. The learned APP has also produced the case diary which has been perused.

7. On a perusal of the case diary it is noticed that the certified copy of the order dated 17.08.2023 passed by this Court in AB 1043/2023 is available. However, the learned APP has referred to the entries made on 20.04.2023 in the case diary which discloses that although certified copy of the interim pre-arrest bail order was submitted before the police station, but there is no record of any appearance made by the petitioners before the I.O. It was submitted that as per entries made in the case diary on 20.04.2023, one Sufiar Rahman (mobile number 98543-45833) had appeared before the I.O. and the certified copy of interim bail was submitted with assurance that the petitioners would appear before the I.O. Hence, it has been submitted that as the petitioners have failed to comply with the directions contained in the interim bail order dated 12.04.2023 passed in AB 1043/2023, the petitioners are not entitled to pre-arrest bail.

8. On a perusal of the additional affidavit filed on 25.01.2024 by the petitioners which was sworn by the petitioner no.1, a statement is made in paragraph-2 with the effect that after obtaining interim order dated 12.04.2023 passed in AB 1043/2023, he had obtained the certified copy of the order and appeared before the concerned I.O. of the case on 15.04.2023. The said statement is not found to be inconsonance with entries made in the case diary on 20.04.2023 wherein the I.O. has recorded that one Sufiar Rahman (mobile

number 98543-45833) had appeared before him and obtained the certified copy of the order and not the petitioners.

9. Thus, the Court is of the considered opinion that an incorrect statement had been made by the petitioners in paragraph-2 of the additional affidavit filed on 25.01.2024 wherein it is projected that the petitioners have appeared before the I.O. on 15.04.2023 but the I.O. did not record in their statement, but as per the case diary a third party had appeared before the I.O. to provide a certified copy of the said order.

10. In view of the incorrect statement made in the additional affidavit sworn on 25.01.2024, the Court is of the considered opinion that the false statement made by the petitioners, disentitles them for pre-arrest bail as they have not approached the Court with clean hands.

11. Therefore prayer for bail is rejected.

12. Let the case diary be returned back.

JUDGE

Comparing Assistant