

GAHC010292472023



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

Case No. : AB/4331/2023

AKKES ALI AND 4 ORS
S/O RUSTAM ALI
R/O VILL- KARAIBIL, P.S. CHHAYGAON
DIST. KAMRUP, ASSAM

2: JUNAB ALI
S/O AKKES ALI
R/O VILL- KARAIBIL
P.S. CHHAYGAON
DIST. KAMRUP
ASSAM

3: MOKRAM ALI
S/O AKKES ALI
R/O VILL- KARAIBIL

P.S. CHHAYGAON
DIST. KAMRUP
ASSAM

4: BAREK ALI @ BABUL ALI
S/O AKKES ALI
R/O VILL- KARAIBIL

P.S. CHHAYGAON
DIST. KAMRUP
ASSAM

5: HAFIZUR RAHMAN
S/O AKKES ALI
R/O VILL- KARAIBIL

P.S. CHHAYGAON
DIST. KAMRUP

ASSA

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR. S H ZAMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

13.02.2024

Heard Mr. A. Ahmed, learned counsel for the petitioners. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent as well as Mr. S. Hoque, learned counsel for the informant.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with Chhaygaon P.S. Case No. 577/2023, under Sections 341/326/307/427/34 of the Indian Penal Code (G.R. Case No. 1665/2023).

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioners, Mr. Ahmed, that

the accused/petitioners are innocent and falsely implicated in the case. It is contended by the petitioners that there was a simple quarrel between the parties which arose only when the accused/petitioner No.1 asked the son of the informant to repay the balance amount of Rs. 1506/- (Rupees Fifteen hundred and six) only. On being asked, the son of the informant, came with some other persons and assaulted the petitioner No.1, and for which he also sustained injury and accordingly he lodged an FIR on the day of the incident itself, at about 5.00 P.M. Thereafter, the informant also lodged the FIR on the next day of the incident at around 11.45 A.M. He also submitted that, the accused/petitioners appeared before the I.O., but, the statement of the petitioners are not available in the Case Diary, but, it is seen that a certified copy of the interim order is already available in the Case Diary, which otherwise establish that the accused/petitioners had appeared before the I.O after obtaining the interim pre-arrest bail. They are still ready and willing to co-operate with the I.O. in further investigation of this case, if they are granted with the privilege of pre-arrest bail and therefore, it is prayed to make the interim pre-arrest bail order as absolute.

In this context, Mr. Parasar, learned Additional Public Prosecutor has submitted that from the Case Diary, it is seen that the informant mentioned the names of all the accused/petitioners alleging that they have assaulted him and his son, by restraining them on road. However, as per the statement of the victim, reveals that the accused/petitioner No.2 namely, Junab Ali, has mainly assaulted him and for which he sustained grievous injury and he has been referred to GMCH for better treatment. Further, he raised no objection in releasing the accused/petitioners on bail except the accused/petitioner No.2.

Further, Mr. S. Hoque, learned counsel for the informant has submitted that the accused petitioner No.1 has a small pan shop and he along with the other co-accused used to harass people. He also submits that they are habitual offender and are involved in similar kind of offence. Thus, he raised objection on the prayer made by the learned counsel for the petitioners and submits that, if the accused persons are released on bail, they may hamper and tamper the case. Accordingly, he submits that, it is not a fit case where the privilege of pre-arrest bail can be granted to the accused/petitioners.

After hearing the submissions of learned counsels for both sides and also perusing the Case Diary, it is seen that the accused/petitioners appeared before the I.O. after obtaining the interim pre-arrest bail. However, there is no statement made by the witnesses in regard to lodging of the FIR by the accused/petitioner No.1. It is also seen that all the accused/petitioners participated in the act. But, the accused/ petitioner No. 2 mainly assaulted the victim with a sharp edges of a brick for which the victim sustained grievous injures and hence, I find that it is not a fit case to extent the privilege of bail to the accused petitioner No.2, namely Junab Ali and accordingly, the interim pre-arrest bail granted to him on 22.12.2023 stands vacated. However, I find it justified to grant the privilege of interim pre-arrest bail to the accused/petitioners namely, **1. Akkes Ali, 3. Mokram Ali, 4. Barek Ali @ Babul Ali and 5. Hafizur Rahman** vide order dated 22.12.2023 is hereby made absolute with same terms and conditions.

In terms of above, this anticipatory bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant