

GAHC010292572023



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

Case No. : AB/4363/2023

MIZANUR RAHMAN AND 12 ORS
S/O- NUR HUSSAIN , VILL- BAMUNIRVITA, P.O- KATARIHARA, P.S-
LAKHIPUR, DIST- GOALPARA, ASSAM, PIN- 783132

2: SANIDUR RAHMAN @ SANIDEUL SK
S/O- AYUB ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

3: TAYSER ALI @ TOISER ALI
S/O- ABDUL HUSSAIN
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

4: AYUB ALI @ AJAB ALI
S/O- LATE AYNAL SK
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

5: AMANUR HUSSAIN @ AMANUR SK
S/O- MAYSER ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM

PIN- 783331

6: MONSUR ALOM @ MONSUR ALI
S/O- MOKSED ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

7: NUR JAMAL SK
S/O- EKABBAR ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

8: SAHA ALOM @ SHAHALOM SK
S/O- EKABBAR ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

9: ABDUL KARIM
S/O- NAYMUDDIN SK
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

10: AZAHAR MASUD@ AZAHAR ALI
S/O- ABDUL KARIM
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

11: SHAJAHAN ALI
S/O- AMZAD ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM

PIN- 783331

12: HASEN ALI
S/O- AMZAD ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 783331

13: ZIARUL HOQUE
S/O- SATTAR ALI
R/O- VILL- DARCHUKA PART-I
P.O- SILAIRPAR
UNDER GAURIPUR POLICE STATION IN THE DIST- DHUBRI
ASSAM
PIN- 78333

VERSUS

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

2:AZIJUR RAHMAN
S/O- TAZUR ALI
VILL- DARCHUKA PART-I
P.S- GAURIPUR
DIST- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR. A F N U MOLLAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

27.02.2024

Heard Mr. A.F.N.U. Mollah, learned counsel for the applicants, Ms. A. Begum, learned Additional Public Prosecutor for the State respondent No. 1; and

Mr. T. Sheikh, learned counsel for the respondent No. 2.

2. Apprehending arrest in connection with **Gauripur P.S. Case No. 466/2023**, under Sections 341/ 509/ 147/ 148/ 448/ 325/ 307/ 427/ 379 of the IPC, read with Section 12 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicants namely, **Mizanur Rahman; Sanidur Rahman @ Sanideul Sk; Tayser Ali @ Toiser Ali; Ayub Ali @ Ajab Ali; Amanur Hussain @ Amanur Sk; Monsur Alom @ Monsur Ali; Nur Jamal Sk; Saha Alom @ Shahalom Sk; Abdul Karim; Azahar Masud @ Azahar Ali; Shajahan Ali; Hasen Ali and Ziarul Hoque;** for grant of pre-arrest bail.

3. The said case was registered on the basis of an FIR lodged by one Azijur Rahman, on 23.11.2023. The essence of allegations made in the FIR is that since last two years one Mizanur Rahman has been harassing his daughter Smti 'X' (name withheld), while she proceeds to school and also restrained her road wrongfully and the matter was reported to his parents on two/three occasions, but he used to repeat the same again and on 23.11.2023, at about 6:00 pm, the family members of Mizanur Rahman entered into the informant's house and tried to kidnap his daughter and also assaulted his family members, with hands and rods and caused mischief of their shop and also stolen a sum of Rs. 3,000/- from the pocket of informant's father.

4. Mr. Mollah, learned counsel for the applicants submits that this Court vide order dated 22.12.2023, has granted privilege of interim pre-arrest bail to the applicant Nos. 2 - 13 and pursuant to the said order, the applicants had appeared before the IO and have been cooperating with the investigating agency and therefore, it is contended to make the interim order dated 22.12.2023, absolute in the same terms and conditions.

5. On the other hand, Ms. Begum, learned Additional Public Prosecutor has produced the case diary before this Court and referring to the statement of the victim girl recorded under Section 164 of the Cr.P.C. submits that she has clearly implicated all the accused persons with the offence alleged in the FIR.

6. Whereas, Mr. Sheikh, learned counsel for the respondent No. 2 submits that still the accused persons are threatening the victim girl to kidnap her, after disposal of this anticipatory bail application. Mr. Sheikh further submits that in his objection petition, he has enclosed relevant documents and photographs and that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicants and therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary with the assistance of learned Additional Public Prosecutor and also perused the objection petition filed by the respondent No. 2.

8. In view of the materials collected so far in the case diary, against the applicant Nos. 2 – 13 and also considering the fact that the applicants No. 2 – 13 have been cooperating with the investigating agency and also in view of the progress of investigation, this Court is of the view that the custodial interrogation of the applicant No. 2 – 13 seems to be unwarranted here in this case. And therefore, this Court is inclined to make the interim order dated **22.12.2023**, in respect of applicant Nos. 2 – 13, **absolute** in the same terms and condition.

9. However, having regards to the nature and gravity of the offence

and the punishment prescribed for the same as well as the materials so far collected in the case diary, especially the statement of the victim girl recorded under Section 164 of the Cr.P.C., this Court is of the view that custodial interrogation of the applicant No. 1 is necessary.

10. Accordingly this Court is of the considered opinion that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant No. 1 namely, Mizanur Rahman and therefore, the same is **dismissed**.

11. The case diary be returned.

JUDGE

Comparing Assistant