

GAHC010022002024



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

**Case No. : I.A.(Crl.)/139/2024**

SARIFUL ALI  
S/O LATE HASMAT ALI, R.O VILL. KALBARI, P.S. SORBHOG, DIST.  
BARPETA, ASSAM, PIN 781317.

VERSUS

ABUL HUSSAIN AND 9 ORS  
S/O SISIR ALI, R/O KALBARI P.S.SORBHOG DIST. BARPETA, ASSAM

2:SAFIUR RAHMAN  
S/O LATE AFAZ UDDIN  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

3:ABU SIDDIK SEKH  
S/O ABDU AZID ALI  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

4:ABU BAKKAR SHEIKH  
S/O ABDUL AZID  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

5:ABDUL BATEN ALI  
S/O LATE SOLEMAN ALI

R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

6:ABDAR ALI  
S/O SISIR ALI  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

7:ABDUL BASIT ALI  
S/O LATE SOLEMA ALI  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

8:ATAR ALI  
SO SISIR ALI  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

9:SISIR ALI  
S/O LATE ABBAS ALI  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

10:THE STATE OF ASSAM

REP. BY THE PP  
ASSA

**Advocate for the Petitioner : MR. S C BISWAS**

**Advocate for the Respondent : PP, ASSAM**

Linked Case : AB/3674/2023

ABUL HUSSAIN AND 8 ORS  
S/O SISIR ALI  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

2: SAFIUR RAHMAN  
S/O LATE AFAZ UDDIN  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM

3: ABU SIDDIK SEKH  
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9: SISIR ALI  
S/O LATE ABBAS ALI  
R/O KALBARI  
P.S.SORBHOG  
DIST. BARPETA  
ASSAM  
VERSUS

THE STATE OF ASSAM  
REP. BY THE PP  
ASSAM

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Advocate for : MR. R ALI  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

Date : **29.05.2024**

- 1)** Heard Mr. S. C. Biswas, learned counsel for the applicant. Also heard Mr. R. Ali, learned counsel for the respondent Nos. 1 to 9 and Mr. K. Baishya, learned Additional Public Prosecutor appearing for the State of Assam.
- 2)** This Interlocutory Application has been registered on filing of an application under Section 439 (2) of the Code of Criminal Procedure, 1973 filed by the applicant Sariful Ali praying for cancellation of pre-arrest bail order

granted to the respondent Nos. 1 to 9 namely, (1) Abul Hussain, (2) Safiur Rahman, (3) Abu Siddik Sekh, (4) Abu Bakkar Sheikh, (5) Abdul Baten Ali, (6) Abdar Ali, (7) Abdul Basit Ali, (8) Atar Ali, and (9) Sisir Ali, by order dated 29.11.2023 in AB Case No. 3674/2023 of this Court on the ground that the said anticipatory bail order was procured by the respondent Nos. 1 to 9 by fraud and suppression of material facts.

**3)** The facts relevant for consideration of the instant interlocutory application is that on 15.02.2023, one Sariful Ali, had lodged an FIR before the Officer-in-Charge of Sorbhog Police Station, inter-alia, alleging that 37 (Thirty Seven) numbers of accused persons named in the FIR had assaulted the father and brother of the first informant and also damaged the properties including the bike of the brother of the first informant and burning the same. It is also alleged that due to the assault, the father of the first informant, namely, Hasmat Ali and the brother, namely, Saiful Ali succumbed to the injuries later on. On receipt of the said FIR, Sorbhog P.S. Case No. 31/2023 was registered.

**4)** The learned counsel for the applicant has submitted that the opposite parties Nos. (1) Abul Hussain; (2) Safiur Rahman; (3) and Abu Siddik Sekh; (6) Abdar Ali; and (8) Atar Ali had preferred an application under Section 438 of the Code of Criminal Procedure, 1973 before this Court for seeking anticipatory bail in connection with Sorbhog P. S. Case No. 31/2023. The said anticipatory bail application was registered as AB No. 741/2023 and by order dated 27.04.2023 the prayer for anticipatory bail was rejected in the said case. It is also submitted by the learned counsel for the applicant that the opposite party No.(4) Abu Bakkar Sheikh had also preferred an application under Section 438 of the Code of Criminal Procedure, 1973, before this Court seeking anticipatory bail in connection with Sorbhog P. S. Case No. 31/2023. The said case was registered

as AB Case No. 721/2023 and by order dated 27.04.2023, the prayer for bail was rejected in that case also. However, the learned counsel for the applicant submits that later on the respondents again preferred an application under Section 438 of the Code of Criminal Procedure, 1973 before this Court and the same was registered as AB Case No. 3674/2023, wherein the respondents did not disclose the fate of the earlier two petitions, filed by some of them and in the said case by order dated 29.11.2023, this Court granted anticipatory bail to the respondent Nos.1 to 9 directing them to appear before the Committal Court in pursuant to the summons issued to them by the said Court and in the event of their appearance before the said Court, they were directed to be released on bail of Rs. 30,000/- each with one surety of like amount with certain conditions.

**5)** The learned counsel for the applicant has submitted that there is a notification issued by the Registry of this Court to the effect that the petitioners are mandatorily required to mention the details of the earlier bail applications filed by the petitioners which have already been decided or pending before any Court and if no such application is pending a clear statement to that effect may be made. However, it is submitted by the learned counsel for the applicant that in the instant case, the respondents in their subsequent anticipatory bail application suppressed the fact of preferring the earlier anticipatory bail applications and also the fact regarding the rejection of the said anticipatory bail applications by some of the respondents and obtained anticipatory bail by suppressing the material fact of rejection of earlier applications.

**6)** The learned counsel for the applicant has cited a ruling of the Apex Court in the case of "**Kusha Duruka Vs. The State of Odisha**" reported in **(2024) 4 SCC 432**, wherein the Apex Court observed as follows:

**"In our opinion, to avoid any confusion in future it would be appropriate to mandatorily mention in the application(s) filed for grant of bail:**

**(1) Details and copies of order(s) passed in the earlier bail application(s) filed by the petitioner which have been already decided,**

**(2) Details of any bail application(s) filed by the petitioner, which is pending either in any court, below the court in question or the higher court, and if none is pending, clear statement to that effect has to be made."**

**7)** The learned counsel for the applicant has thus submitted that the benefit of anticipatory bail was obtained by the respondent Nos. 1 to 9 by suppressing a very material fact as regards the fate of earlier applications preferred by the said respondents, hence, they are not entitled to continue the said benefit after the fact of suppression of facts made by them come into light.

**8)** On the other hand, learned counsel for the respondents has submitted that there was no mala-fide intention by the respondents in not mentioning about the fate of their applications in the anticipatory bail application No. AB 3674/2023 in which they were granted bail as the rejection of their earlier bail application was at a preliminary stage, whereas, the anticipatory bail was granted to them by order dated 29.11.2023 in AB Case No. 3674/2023 only after completion of investigation and after issuance of summons to the respondents by the Committal Court.

**9)** The learned counsel for the respondents has also submitted that the notification referred to by the learned counsel for the applicant is a notification issued in the earlier part of this year, whereas the anticipatory bail application in which the relief was granted to the respondents was of the year 2023 which was disposed of by order dated 29.11.2023

**10)** The learned counsel for the respondents has also submitted that the case cited by learned counsel for the applicant, namely, ***Kusha Duruka Vs. The State of Odisha (Supra)*** was also decided only on January 19, 2024, which was much later than the date on which the order for grant of anticipatory bail to the respondents in AB Case No. 3674/2024 was passed i.e. on 29.11.2023.

**11)** The learned counsel for the respondents has also submitted that the signatures of the applicant/informant Sariful Ali in the FIR as well as in the affidavit filed along with this instant Interlocutory Application and vakalatnama does not tally with each other, which itself raises a doubt as to whether the present applicant is the first informant of the Sorbhog PS case No. 31/2023 or whether the instant application has been filed by some other proxy person by forging the signatures of the first informant.

**12)** The learned counsel for the respondent has also submitted that the respondents are co-operating with the Committal Court and there is no allegation against them of threatening any witnesses or trying to flee the course of justice.

**13)** The learned counsel for the respondents has submitted that in the meanwhile, twelve other co-accused persons were already granted bail by this Court in Bail Application No. 2161/2023 by order dated 24.07.2023 and as the respondents have complied with the Court's order, while on Bail, there is no justification for cancellation of their anticipatory bail order and hence, it is prayed that this Interlocutory Application may be dismissed.

**14)** The learned counsel for the respondents has also cited a ruling of the Supreme Court of India in the case of "***Sabita Paul and Other Vs. The State of West Bengal and Another***" reported in **(2021) 15 SCC 777**, wherein under similar circumstances, the Apex Court had set aside the order of cancellation of bail

passed by the Division Bench of the High Court of Calcutta.

**15)** I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record.

**16)** It appears from the record that in the anticipatory bail application filed by the respondents in AB Case No. 3674/2024, which was allowed by order dated 29.11.2023, by this Court, the fact of rejection of earlier application filed by the respondent Nos.1, 2, 3, 6, 8 and 4 as well as the fact of the rejection of the said applications was not mentioned. It also appears that the affidavit annexed with the Anticipatory Bail Application No. 3674/2024 is silent about any earlier anticipatory bail application filed by the respondents in connection with Sorbhog P. S. Case No. 31/2023.

**17)** However, it also appears that the judgment of the Apex Court in the case of ***Kusha Duruka Vs. The State of Odisha (Supra)*** was delivered on 19.01.2024, which is much later than the date on which the Anticipatory Bail Application No. 3674/2024 was allowed i.e. on 29.11.2023.

**18)** It also appears that the Notification No.9 which was issued by the Registry of this Court, which mandates the mentioning of the details of earlier bail application filed by the petitioner and the fate thereof, was also issued on 03.02.2024 which is much later than the date i.e. 29.11.2023 on which the respondent Nos. 1 to 9 were allowed to go on anticipatory bail.

**19)** However, it appears that there is an earlier Notification dated 06.04.2005 issued by the Registry of this Court, which provides that the subsequent bail applications are required to be placed before that Hon'ble Judge who had dismissed the earlier bail application and to comply with the said notification, it would be required to disclose the fate of the earlier application filed by the petitioner in his petition, and unless such disclosure is made, it may not be

possible to comply with the Notification dated 06.04.2005. Hence, it appears that the respondent Nos. 1, 2, 3, 6, 8 and 4 have suppressed the fact regarding fate of the earlier applications filed by them, in AB Case No. 3674/2023. This conduct of suppression of fact by the aforesaid respondents may be a ground, in itself, for cancellation of the anticipatory bail granted to the aforesaid respondents, however, this Court does not propose to take such an extreme step in view of the fact that there is no allegation against the aforesaid respondents that after getting the anticipatory bail, the respondents have violated any of the terms and conditions of the anticipatory bail order. It is also pertinent to note that in the meanwhile, 12 numbers of other named accused persons who were arrested in Sorbhog P.S. Case No. 31/2023, were allowed to go on bail by this Court, Further, there is no allegation of any threatening of any witnesses or victims by the aforesaid respondents who were allowed to go on anticipatory bail.

**20)** However, this Court deems it appropriate to burden respondent Nos. (1) Abul Hussain; (2) Safiur Rahman; (3) Abu Siddik Sekh, (6) Abdar Ali, (8) Atar Ali, and (4) Abu Bakkar Sheikh with a token cost of Rs. 5,000/- (Rupees Five Thousand) each, which shall be deposited by them before the Secretary, District Legal Services Authority before the next date fixed before the learned Committal Court and they shall thereafter appear before the learned Committal Court on the next date fixed with a copy of receipt of payment of the aforesaid cost. In the event of failure to pay the cost, as directed, the anticipatory bail granted to the above named respondent Nos. (1) Abul Hussain; (2) Safiur Rahman; (3) Abu Siddik Sekh, (6) Abdar Ali, (8) Atar Ali, and (4) Abu Bakkar Sheikh, in AB Case No. 3674/2023 by order dated 29.11.2023 shall be treated to be cancelled.

**21)** This Interlocutory Application is hereby stands dismissed.

**22)** Registry shall send a copy of this order to the learned Committal Court.

**JUDGE**

**Comparing Assistant**