

GAHC010031802024



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

Case No. : AB/359/2024

MD. MAINUL HOQUE
S/O AYUB ALI,
RESIDENT OF JORGORH, BHOJKHOWA CHAPARI, KALIABHOMORA,
TEZPUR, SONITPUR, ASSAM

2: SUHRAB ALI @ SURHAB ALI
S/O AYUB ALI
RESIDENT OF JORGORH
BHOJKHOWA CHAPARI
KALIABHOMORA
TEZPUR, SONITPUR
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR. N MAHAJAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

22.04.2024

Heard Mr. N. Mahajan, learned counsel for the applicants and also heard Mr. B.

Sarma, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with P.R. Case No.12/2024, under Section 341/326/34 IPC, arising out of Tezpur P.S. Case No.313/2023 under Section 326/307/34 IPC, this application under Section 438 Cr.P.C. is preferred by two applicants, namely, Md. Mainul Hoque and Suhrab Ali @ Surhab Ali, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Mariom Begum, on 26.03.2023. The essence of allegation made in the aforesaid FIR is that on 24.03.2023, at about 9:30 p.m., while her son Jiabur Rahman Khan was returning home from Saru Chariali Centre, along with Abul Sahid and Saidur Islam, then one Mainul Haque, Habibur Rahman and Sobhar Ali, who were waiting in a pit with sharp weapon, attacked her son with sharp objects from backside, in front of Chariali Masjid of Jorgarh village, as a result of which her son sustained grievous on his person and one Abul Sahid, who was with her son also sustained injuries over his finger and thereafter, her son managed to escape and entered into the house of Akkash Ali and there also the accused persons attacked him.

4. Mr. Mahajan, learned counsel for the applicants submits that after completion of investigation the I.O. has submitted charge-sheet under Section 341/326/34 IPC showing the present applicants as absunder in the said charge-sheet. Mr. Mahajan further submits that in connection with the said occurrence, another FIR was lodged by Ismail Sheikh, the brother of the present applicants, wherein their brother Habibur Rahman, who has been named in the FIR lodged by Mariom Begum as accused No.2, was killed and that the said fact is concealed in the FIR dated 26.03.2023, by the informant Mariom Begum and that initially summons were issued to the applicants, vide order dated 04.01.2024 and as per his instruction, subsequently, the learned Court below had issued non-bailable warrant of arrest against the applicants and that the applicants are ready to face trial and will appear before the learned Court below on each and every date and therefore, it is contended to allow this petition.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, submits that after completion of investigation, the I.O. has already submitted charge-

sheet and the case is now pending for appearance of the applicants. However, in view of the seriousness of the offence, Mr. Sarma has opposed the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

7. It appears that the investigation of the case has already been completed and charge-sheet has been submitted against the present applicants by showing them as absconder. It also appears that though the learned Court below has issued summon vide order dated 04.01.2024, yet, subsequently the learned Court below, submitted by Mr. Mahajan, learned counsel for the applicants, on instruction, had issued non-bailable warrant of arrest against the applicants.

8. Since the investigation of the case has already been completed and charge-sheet has been submitted, there is no question of hampering the investigation or tampering the witnesses at this stage. Besides, the applicants have undertaken to appear before the learned Court below on each and every date. Therefore, this Court is inclined to dispose of this pre-arrest bail application by directing the applicants to appear before the learned Court below on or before **10.05.2024** and to apply for regular bail and in the event of filing such an application, the learned Court below shall consider the same in accordance with law.

9. It is further provided that till then, in the event of arrest of the applicants, namely, Md. Mainul Hoque and Suhrab Ali @ Surhab Ali, in connection with P.R. Case No.12/2024, under Section 341/326/34 IPC, arising out of Tezpur P.S. Case No.313/2023 under Section 326/307/34 IPC, they shall be enlarged on interim pre-arrest bail on their executing a bond of ₹ 50,000/- each, with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) The applicants shall appear before the learned Court below on or before **10.05.2024**;
- (ii) The applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

- (iii) The applicants shall not leave the jurisdiction of the learned S.D.J.M.(S), Sonitpur at Tezpur, without prior permission.
10. In terms of above, this anticipatory bail application stands disposed of.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant