

GAHC010128032020



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

Case No. : I.A.(CrI.)/457/2020

SRI NIRMAL PAUL AND ANR
S/O LATE NARAYAN PAUL @ NITAI PAUL

2: SANJU PAUL
S/O LATE NARAYAN PAUL
BOTH ARE THE R/O VILL. GOBARDHAN
GHORAMARA JANPAM
P.S. PRAGJYOTISHPUR
DIST. KAMRUP

VERSUS

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

2:AJOY PAUL
S/O LATE SUBAL PAUL
THE R/O VILL. GOBARDHAN
GHORAMARA JANPAM
P.O. CHANDRAPUR
P.S. PRAGJYOTISHPUR
GUWAHATI 781105
DIST. KAMRUP M
ASSA

Advocate for the Petitioner : MR N AHMED

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./50/2016

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Advocate for : MR.B I KHAN

Advocate for : MR.A D CHOUDHURY R-2 appearing for THE STATE OF ASSAM
and ANR

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 09/03/2021
Suman Shyam, J

Heard Mr. N. Ahmed, learned counsel for the applicants. We have also heard Mr. M Phukan,
learned APP, appearing for the State.

By filing this IA, the two applicants have approached this Court for the second time seeking
their release on bail.

The earlier bail application filed by the applicants being registered and numbered as IA(CrI) 1719/2016 was disposed of by this Court by order dated 25/10/2016 rejecting the bail prayer made by the present applicants.

Mr. Ahmed submits that his clients are in jail since 11/01/2016. The order dated 25/10/2016 was passed at a very initial stage. However, subsequently, the circumstances have changed and the learned counsel for the applicants also had the opportunity to minutely scrutinize the records (LCR). Mr. Ahmed submitted that it is evident from the LCR that there is no evidence to sustain the conviction of the applicant no. 2 under Section 302/34 of the IPC.

We have also heard Mr. M. Phukan, learned APP and gone through materials placed before this court including the LCR.

After a careful examination of the LCR, we find that there is sufficient evidence against the applicant No. 1 Sri Nirmal Paul. Therefore, the bail prayer of the applicant no. 1 stands rejected.

In so far as the applicant no. 2 Sri Sanju Paul is concerned, save and except the testimony of PW-7, who has deposed that the applicant no. 2 was present in the place of occurrence with a lathi in his hand, there is no other evidence directly implicating him with the occurrence. Whether the presence of the applicant no.2 in the place of occurrence with a lathi in his hand would be sufficient to constitute common intent under Section 34 of the IPC is a matter that will have to be examined during final hearing of the appeal. However, considering the facts and circumstances of the case and the period of detention already undergone by the applicant no.2, we deem it appropriate to grant him bail.

We, therefore, direct that the applicant No. 2 Sri Sanju Paul be released on bail on furnishing bond of Rs. 20,000/- with two sureties of like amount to the satisfaction of the learned Additional Sessions Judge No.2, Kamrup (Metro).

The learned Additional Sessions Judge would also be at liberty to impose any other condition

for releasing the applicant no.2 Sri Sanju Paul on bail.

This IA stands disposed of accordingly.

JUDGE

JUDGE

Sukhamay

Comparing Assistant