

GAHC040001732023



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

Case No. : BA 10/2023

1:Rado Sonam
S/o Late Tah Sonam,
PO/PS Bameng, East Kameng District, Arunachal Pradesh.
Phone No. 7005601989

VERSUS

1:THE STATE OF AP and Anr.
Represented by the Public Prosecutor.

2:Nang Rozalene Mannow
D/o Shri Chow Kamjey Mannow

Village Chongkham
PO/PS Chongkham
District Namsai
Arunachal Pradesh

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : P P of AP

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

Date : 21-02-2023

Heard Mr. T. T. Tara, learned counsel for the applicant. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. This application is filed under Section 439 of the Code of Criminal Procedure, 1973, praying for granting regular bail to the alleged accused, who has been languishing in jail since 26.08.2022, in connection with Seppa P.S. Case No.24/2022, in corresponding to G.R. Case No.36/2022, registered under Sections 342/506/376(1) of the Indian Penal Code arising out of the FIR dated 06.05.2022, filed by the victim informant. Since, re-arrest alleged accused person is in judicial custody at Sub-Jail, Seppa.

3. Scanned copy of the LCR has been received and I have perused the same.

4. Mr. Tara, learned counsel for the applicant has submitted that the present accused person Sri Babing Haffi was arrested in connection with Seppa P.S. Case No.24/22, corresponding to GR Case No.36/22, under Sections 342/506/376(1) of the Indian Penal Code 07.05.2022. Thereafter, bail application was moved before the Court of learned Chief Judicial Magistrate, Seppa on 10.05.2022, and accordingly the said Court was pleased to allow the applicant to go on bail vide order dated 17.05.2022. He also submitted that the learned Chief Judicial Magistrate, Seppa was pleased to take up the bail matter in pursuant to the authorization order dated 19.04.2022, sent by the District & Sessions Judge, Bomdila, whereby authorizing the learned CJM, Seppa to take

up remand and bail matters under NDPS & POCSO Act during the absence of the Hon'ble District & Sessions Judge, Bomdila, who was on leave.

5. Further, the bail order dated 17.05.2022, was challenged before this Court, by investigating officer on the ground of irregularity of jurisdiction as offence was categorized as exclusively triable by a Sessions Court. After hearing the parties at length, the bail order was canceled by this Court, vide order dated 26.08.2022. Thereafter, the accused person was remanded back to the judicial custody and since the case had been transferred to Sessions Court, Bomdila upon filing of charge-sheet. Thus, after filing of the charge-sheet, the accused person filed another bail application before the learned Trial Court and the same was rejected vide order dated 09.09.2022, only with a view that there is threat of intimidating the prosecutrix without any materials to substantiate the same.

6. It is also observed that the present alleged accused and the victim were in love affair and the FIR was lodged with some false allegation only to harass the alleged accused person.

7. After cancellation of the bail order by this Court and rejection of the bail by the learned District & Session Judge, Bomdila, again the alleged accused person had filed another application for bail before this Court, which was registered as BA.110(AP)/2022, but, when the case was in service stage, his friend had instructed his engaged counsel to withdraw the said bail application.

8. The learned counsel for the applicant has submitted that there is no

question of hampering or tempering of the evidence at this stage, if he is granted the privilege of regular bail, as the case has already been charge-sheeted and more so, witnesses were already been examined. Also, there is a difficulty on the part of the learned engaged counsel of the alleged accused person to take proper instruction from him, as he is still behind the bar. The accused person is in custody since 167 days and since the trial itself has commenced, there is no necessity of further detention of the accused person.

9. It is also stated that the learned Chief Judicial Magistrate, Seppa had granted the bail to the present accused person on the strength of the authorization letter dated 19.04.2022, given by the learned District & Sessions, Bomedila and hence, committed no mistake on illegality, although the bail order was cancelled by this Court.

10. Further, it is also submitted that the accused/applicant is pursuing his studies from the Open University and one application form is also furnished in the record which is annexed as Annexure-8 of the petition.

11. Mr. Tara, learned counsel for the applicant is relying on the decision of the Hon'ble Apex Court reported in (2018) 3 SCC 22 in the matter of ***Dataram Singh vs. State of Uttar Pradesh & Anr.***, where it is stated that;

"To put it shortly, a humane attitude is required to be adapted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity

of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *Inhumane Conditions in 1382 Prisons, In re.*”

12. Further, giving stress on the rights and liberty of the alleged accused person, the learned counsel for the applicant states that “the terms ‘life’ and personal liberty’ encompasses a wide variety of rights of the people, which are a result of the evolution in the interpretation of Article 21 by the Courts over the years. Here, we shall examine the various aspects of this Fundamental Rights; but before that, let’s have a look at the jurisprudential evolution of this concept and the significance of one of the most famous judgments related to it—*Maneka Gandhi Vs. Union of India*(1978). 1 SCC 248.”

13. In this context, Ms. T. Jini, learned Additional Public Prosecutor has submitted that the learned Chief Judicial Magistrate, Seppa had passed the bail order as per authorization letter given by the learned District & Sessions Judge, Bomdila, but the bail order was subsequently cancelled by this Court, vide order dated 26.08.2022, on the ground that learned Chief Judicial Magistrate, Seppa had passed the order without jurisdiction as well as elaborately discussed about the provisions of bail and also relied upon a decision of the Hon’ble Supreme Court in the case of *Prahlad Singh Bhati Vs. NCT, Delhi & Anr.*, reported in (2001) 4 SCC 280, wherein it held as under;

" 27. In view of our aforesaid discussion, we sum up the matter as below:

(vii). In case of successive bail applications, it must be indicated as to what was the subsequent developed or as to why departure is made."

14. The learned Additional Public Prosecutor, Ms. Jini, has further relied on the decision of the *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.*, reported in 2004 (4) Supreme 84.

15. Ms. T. Jini, learned Additional Public Prosecutor has submitted that the period of detention undergone by the alleged accused person cannot be a sole ground for enlarging him on bail. The nature of offence committed by the alleged accused person is very serious and also there is a probability of hampering and tempering of the witnesses by the accused person, if he is granted bail. Further, she also submitted that no witnesses including the victim have been examined till date and hence, the probability of hampering and tempering of witnesses especially the victim cannot be outrightly denied.

16. Accordingly, it is also submitted that the learned District & Sessions Judge, Bomedila had rejected the bail application vide order dated 09.09.2022, had committed no illegality and as it was observed that there was a threat from the accused person, for which the victim had to shift her examination center as well as her residence. In the same time it is also seen that there is no new ground available in the present case; except the ground of pursuing studies in Open University is not acceptable for bail.

17. In this regard, Mr. Tara, learned counsel for the applicant has submitted that the applicant has not committed any offence as alleged by the informant and accordingly prays to grant regular bail and also states that he will cooperate the investigating agency as and when required, if, the regular bail is granted to him. He has also submitted that the accused person is pursuing his studies through Open University.

18. After hearing the submission made by the learned Advocates of both sides as well as perusing the LCR and the objection raised by the opposite party; also considering the cancellation of bail order passed by this Court and the learned District & Sessions Judge, Bomdila and on the ground of safety of the victim, I find that allowing the accused person to go on bail may hamper or temper the evidence of the witnesses as well as other evidence of this case and hence, it is not a fit case, where, the privilege of regular bail can be granted to the accused/applicant at this stage and accordingly, the same stands rejected.

19. In view of above, this Bail application stands disposed of.

20. LCR be returned.

JUDGE

Comparing Assistant