

GAHC040003822023



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

Case No. : BA 35/2023

1:Rado Sonam
S/o Late Taha Sonam,
PO/PS Bameng, East Kameng District, Arunachal Pradesh.

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 : 20.04.2023

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

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused, who has been arrested in connection with Seppa P.S. Case No. 24/2022, corresponding to G.R. Case No. 36/2022, under Sections 342/506/376(1) of the Indian Penal Code, arising out of the F.I.R. dated 06.05.2022.

3. It is submitted by the learned counsel for the petitioner, Mr. Tara, that this is the 4th successive bail application filed on behalf of the present accused. Further it is submitted that the accused is in custody for last 238 days from his re-arrest after cancellation of his earlier bail by this Court. The learned Sessions Court as well as this Court have rejected the earlier bail applications of the accused mainly on the ground that there is a chance of hampering or tampering the evidence of witnesses of the victim as well as other witnesses and also considering the ground of safety of the victim, as there was an allegation of threatening to the victim as well as other witnesses of this case. But, at present, out of the 7 (seven) prosecution witnesses, 4 (four) numbers of witnesses have already been examined including the victim of this case and hence, the question of hampering or tampering the witnesses does not arise at this stage. It is

further submitted that the present application is filed with a new ground of illness of the wife of the accused and there is none to look after his wife, as the accused is behind the bar for more than 8 (eight) months. The accused is a permanent resident of his addressed locality and hence there is no chance of absconding if the accused is enlarged on bail.

4. The learned counsel for the petitioner, Mr. T. T. Tara, further, relying on a decision of Hon'ble Supreme Court in **Dataram Singh Vs. State of Uttar Pradesh & Anr.**, reported in **(2018) 3 SCC 22**, submitted that the rights and liberty as well as the fundamental rights of the accused has to be considered while dealing with an application for bail.

5. In this context, the learned Additional Public Prosecutor, Ms. T. Jini, has submitted that this is the subsequent bail application and the earlier 2 (two) bail applications of the present accused were rejected by the learned Sessions Judge as well as by this Court on the ground that there is probability of hampering or tampering the witnesses of this case as there was an allegation of threat by the present accused. The learned Additional Public Prosecutor also placed reliance on a decision of Hon'ble Supreme Court in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr.**, reported in **2004 (4) Supreme 84**, and submitted that the period of detention only cannot be the ground for enlarging the accused on bail. Further, the learned Additional Public Prosecutor has pointed out that at the time of rejection of the earlier bail applications, it is seen that the statement of the victim was already recorded by the learned Sessions Judge, but the same was rejected considering the ground that there may be hampering or tampering the evidence of witnesses.

6. The learned Additional Public Prosecutor also relied on the decision of Hon'ble Supreme Court reported in **2017 0 AIR(SC) 1685 (Virupakshappa Gouda & Anr. Vs. The State of Karnataka & Anr.)**, and further emphasized on paragraph 20 of the said judgment, which reads as under:

“20. In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail. He has not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety call for axing of the order.”

7. Further it is submitted by Ms. T. Jini, learned Additional Public Prosecutor, that the present bail application is filed only with a new ground with regard to the health issue of the wife of the accused, but the documents which is relied by the accused is not a complete document and there is no seal and signature of the authorized person to consider that the medical certificate is a genuine one.

8. In this context, the learned counsel for the petitioner, Mr. Tara, has produced the original copy of the medical document before this Court stating that as the document which is placed before the Court is a photocopy one and the seal is not visible in the said document. However, the seal is available in the original medical document of the wife of the accused and accordingly, the learned counsel for the petitioner submitted that considering the new ground in the present petition, the bail prayer of the accused may be considered, who has been behind the bar for a considerable period.

9. After considering the submissions made by the learned counsels for both sides and also on perusal of the case record, it appears that the evidences of the informant/victim, along with 4 (four) other witnesses, have already been examined by the learned Court below, though the same is not available in the scanned copy of the LCR which is produced before this Court. It is further submitted by Mr. T. T. Tara that during the pendency of the present petition, two more witnesses are already examined by the prosecution. So, considering this aspect of the case, the question of threatening or hampering or tampering the evidence of witnesses does not arise at this stage. It is a fact that at the time of rejection of the earlier bail application, the statement of the victim was recorded, however the same was not placed before this Court and due to oversight, the statement of the victim could not be considered while passing the order on earlier bail applications.

10. So, considering all above aspects of the case, the new ground brought by the accused as well as the materials in the case record and the evidence of the witnesses and further considering the length of detention already undergone by the accused, I find it proper to allow the accused to go on bail.

11. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Sessions Judge, Bomdila, the accused, namely, Shri Babing Haffi, be enlarged on bail, subject to the following conditions:

- (i) that the accused shall make himself available for interrogation by the Investigating Officer as and when required;
- (ii) that the accused 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) that the accused shall not leave the jurisdiction of the learned Sessions Judge, Bomdila, without prior permission.

12. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant