

GAHC040004212023



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

Case No. : BA 39/2023

1:Onyang Chije (Angu)
W/o Duge Angu,
Presently residing at Prem Nagar Colony, PO/PS Naharlagun, District Papumpare,
Arunachal Pradesh and a permanent resident of Dorjeeling Village, PO/PS Menchuka,
District Shi Yomi, Arunachal Pradesh.
Phone No. 9362816386

VERSUS

1:THE STATE OF AP and Anr.
To be represented by Public Prosecutor.

2:Khyoda Budh
S/o Khyoda Tukh

Presently residing at Damsite
PO/PS Naharlagun
District Papumpare
Arunachal Pradesh (Informant

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 03.05.2023

Heard Mr. D. Panging, learned counsel for the applicant. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State and Mr. R. Sonar, learned counsel appearing for the informant, the respondent no. 2.

2. This Bail Application, under Section 439 of the Cr.P.C., 1973, has been filed by the applicant for releasing the accused Shri Tanu Chije on bail, who was arrested on 05.11.2021, in connection with Naharlagun P.S. Case No. 182/2021, under Section 304-Part-I of the IPC, 1860, corresponding to the Sessions Case No. 10/2022.

3. It is noted that the present application is the 4th successive bail application before this Court.

4. The case projected by the learned counsel for the applicant in nutshell is that on 04.11.2021, the accused had accompanied his friend to the rental house of Smti. Yami Komi Nyogen. It was on the eve of the Diwali, so they had some drinks and while in the house of Smti. Yami Komi Nyogen, another group comprising of John Tapin and his friends were having drinks in the adjacent room of the rental house. Thereafter, at around 10.00 PM, John Tapin and his friends joined the accused and his friends. While they were playing 'Tambola', John Tapin got offended when the accused teased him, saying that he was not a real Bokar (a tribe) and altercation erupted between the two which escalated into physical confrontation, wherein the

accused being well build physically dominated and overpowered John Tapin. John Tapin then called his other friends, who were also celebrating Diwali nearby and at the instigation of John Tapin, they started beating the accused and his 2 other friends who were with him. The accused then tried to run away from the scene, however, the deceased Khyoda Tama chased him and his friends. The accused was beaten by Khyoda Tama and as such, the accused pushed Khyoda Tama due to which Khyoda Tama fell on the ground. The accused then, in order to save himself from the group, run away from the place. Later, it was learnt that Khyoda Tama was admitted to the Hospital and that he has succumbed to his injuries at around 3.30 AM. The father of the deceased filed the F.I.R., against the accused and 2 of his friends and NLG P.S. Case No. 183/2021, under Section 302/34 of the IPC was registered.

5. Thereafter, the accused was arrested on 05.11.2021. The accused had filed bail application before the Judicial Magistrate First Class (JMFC), Yupia, wherein he was granted bail on default, since he was in judicial custody for more than 90 days and no charge-sheet was submitted, however, before he was released on bail, the charge-sheet against him was submitted and the learned Judicial Magistrate First Class (JMFC), Yupia, cancelled the default bail granted on 04.02.2022. Thereafter, the accused had again applied for bail before the Court of District & Sessions Judge, where his bail application was rejected on the ground that before release of the accused person on bail, prosecution witnesses should be allowed to give their evidence.

6. The learned Sessions Judge, at the time of consideration of charged, held that, from the materials on record there are no sufficient grounds for

conviction of the accused, under Section 302 IPC and the charge against the accused was converted to section 304 Part-I IPC and thus framed charge against the accused under Section 304 Part-I IPC. The other 2 co-accused persons were discharged on the ground of insufficient materials/evidences.

7. The learned counsel for the applicant submits that from the evidence and on perusal of the charge-sheet, it reveals that the deceased Khyoda Tama, who had repeatedly beaten the accused, consequently, the accused in order to save himself had pushed the deceased Khyoda Tama, who fell on the ground. The accused had acted in good faith, in exercise of his private self-defense and no weapon was used in the accident.

8. The learned counsel for the applicant submits that the bail application being No. BA 58/2022 was filed before this Court, which was rejected on 19.07.2022, on the ground that the prosecution witnesses are yet to be examined, as accused and some of the eye-witnesses belonged to the same village and hence, there is a chance of intimidation to them and the accused at his stage could influence the prosecution witnesses.

9. The accused has filed the second bail application being No. BA 77/2022 dated 22.08.2022, which was also rejected on the ground that the vital eye witnesses of the case are still yet to record their statement before the learned Trial Court. Before dismissing the bail application, this Court has directed the Trial Court to issue summons upon the eye witnesses as expeditiously as possible within the month of October, 2022.

10. The accused has again approached this Court by filing the bail application being No. BA 111/2022 dated 24.01.2023, for the 3rd time, but

the same was again rejected while relying on the depositions of PWs 3, 9, 10 & 12, who were the eye-witnesses of the incident; particularly, the deposition of PW-9, thereby citing that no case for grant of bail could be made out.

11. The learned counsel for the applicant submits that the observations made in the bail rejection order dated 24.01.2023 as observed by this Court, more particularly, while in concern with the PW-9 was of complete discretion of this Court, however, as a matter of facts, the PW-9 being a close friend of John Tapin, she is an interested witness and in pursuance she has totally improvised her statement as such her statement deposed before the Trial Court is fully contradict with statement recorded under Section 161 of Cr.P.C.,. He further submits that after the rejection of the last bail plea vide BA 111/2022, which was rejected on 24.01.2023 by this Court, the Investigating Officer of the case was examined and cross examined on 16.03.2023, wherein the Investigating Officer being the witness concern with impartiality and with the veracity of the case, an inference in terms of Plea of private defense/self-defense on the part of accused person, has been made out from the statement of the Investigating Officer.

12. The learned counsel for the applicant submits that while in concern with the trial status of instant case at this juncture, all the persecution witnesses have already been examined before this Court inclusive of Investigating Officer and out of 15 PWs, the PWs 3, 9, 10 & 12 are the eye-witnesses subject to final adjudication of the case. However, the deposition of the PW-3 and 9 are contradictory to their earlier statements and same cannot be considered as a Gospel truth till final disposal of the case. Although, the PW-

10 has deposed that she has only seen the accused fleeing way from the place of occurrence, but has not seen the accused assaulting the victim. Likewise, PW-12 is the independent witness, who deposed that she saw the accused while pushing the deceased and punch couple of times, but the part of body wherein the punches were blown is completely silence in her deposition but an inference of self-defense on the part of accused can be drawn from her cross examination. All the PWs except the PW-12 and PW-6 are close friends of deceased and John Tapin and as such they are interested witnesses.

13. The learned counsel for the applicant submits that upon the conclusion of trial proceedings, an inference of plea of private defense/self-defense on the part of the accused can be drawn from the deposition of 2, 5, 12, 14 & 15. Therefore, the preponderance of probabilities of self-defense can be construed and as such the accused is entitled to be enlarged on bail for proper preparation of his defense plea in due course of time.

14. The learned counsel for the applicant submits that the accused person had been in custody for 508 days since the date of arrest date 05.11.2021, till the filing of this petition. Due to long incarnation of the accused person in judicial custody since from 05.11.2021, it has become a big barrier on the part of the accused to communicate with his counsel for preparation of his plea to prove his innocence and to adduce defense evidences thereof. He further submits that generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at the trial by reasonable amount of bail. The object is neither punitive nor preventive. Detention of accused must be considered a punishment, unless it

is required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until proven guilty.

15. The learned counsel for the applicant further submits that this bail application has been filed on the changed situation or circumstances of the case inasmuch as the earlier 3 (three) bail applications were rejected on different grounds and circumstances at that relevant point of time of the trial of the matter. Now, the changed situation or the circumstances is that all the PWs have been examined and cross examined before the Trial Court.

16. The learned Additional Public Prosecutor has produced the scanned copies of the case records. While referring to the evidence of the witnesses, he submits that the guilt of the accused is established and therefore, since the offence is under Section 304-Part-I of the IPC and having regard to the last 3 bail applications having been rejected there is no ground for enlarging the accused person on bail.

17. Mr. R. Sonar, learned counsel for the respondent no. 2, while opposing the present application submits that having regard to the seriousness of the offence committed by the accused coupled with the fact that there is no changed situation for filing this 4th bail application, no case has been made out for granting of bail to the accused person.

18. Mr. Sonar, learned counsel for the respondent no. 2 has placed reliance on the judgment of Hon'ble Supreme Court in the case of ***Rajesh Ranjan Yadav Versus CBI, reported in (2007) 1 SCC 70*** and in the case of

Kalyan Chandra Sarkar Versus Rajesh Ranjan and Another reported in (2005) 2 SCC 42. While drawing the attention of this Court to the judgments of the aforesaid case, he submits that it cannot be said that there is any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said that there is absolute rule that because a long period of imprisonment has expired bail must necessarily be granted. He further submits that on the facts and circumstances of the present case, it is certainly not a case for grant of bail to the accused on the premises the PWs have been examined and now the DWs alone have to be examined. It would be wholly inappropriate to grant bail when not only the investigation is over but even the trial is partly over, and the allegations against the appellant are serious.

19. Mr. Sonar, learned counsel for the respondent no. 2 finally submits that since this is a successive bail application for the 4th time by the accused without there being any changed situation or circumstances, apart from the merit of the case, this bail is liable to be rejected.

20. I have considered the rival submission of the learned counsel for the parties and also perused the scanned copies of the record.

21. On consideration of the material available on record and also having gone through the earlier rejections order of the bail applications by this Court, this Court finds that the rejection of the 1st appeal was on the ground that the evidences of the prosecution witnesses are yet to be examined, as accused and some of the eye-witnesses belonged to the same village and hence, there is a chance of intimidation to them and the accused at this

stage could influence the prosecution witnesses. The 2nd bail application was rejected by this Court on the ground that the vital eye witnesses of the case are still yet to record their statements before the learned Trial Court. The 3rd bail application was rejected relying on the depositions of PWs 3, 9, 10 & 12, who were the eye-witnesses of the incident; particularly, the deposition of PW-9, thereby citing that no case for grant of bail could be made out.

22. The present bail application praying for grant of bail to the accused Mr. Tanu Chije, relying on the evidence of PW-15, the Investigating Officer, on the ground that the Investigating Officer being the witness concerned with impartiality and with the veracity of the case, an inference in terms of Plea of private defense/self-defense on the part of accused person, has been made out from the statement of the Investigating Officer, which, this Court finds to be a new situation or circumstances for filing the present bail application.

23. This Court is conscious of the fact that in the present case a precious life of a person has been lost and at the same time the accused is only under trial and his personal liberty is a relevant consideration. However, equally important consideration is in the public interest and fair trial of the accused. In the considered view of this Court, Courts have to adopt a liberal approach while considering the bail application of the accused person, unless there is a possibility of interdicting fair trial by the accused, if released on bail. The personal liberty of the accused and the public interest of fair trial while undertaking balancing of the case in the one hand for the interest of the society and fair trial on other to be maintained.

24. The Hon'ble Apex Court in the case of ***Rajesh Ranjan Yadav Versus CBI(Supra)*** held that there is no absolute and unconditional rule about

when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said that there is any absolute rule that long period of imprisonment has expired and bail must necessarily be granted.

25. In the present case, since all the PWs have been examined and there is nothing to show that there is a possibility of interdicting by the accused, if released on bail therefore, this Court is of the considered opinion that the accused is entitled to be enlarged on bail.

26. In view of the above discussions and in the facts and circumstances of the present case, this Court is inclined to grant the accused person to be enlarged on bail on furnishing a bond of Rs. 15,000/- (Rupees fifteen thousand) with one surety of like amount, to the satisfaction of the learned Chief Judicial Magistrate, Yupia.

The above privilege is however, subject to the following conditions:-

- i) that the accused shall make himself available as and when summoned by the Trial Court;
- (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; and
- (iii) that the accused shall not leave the jurisdiction of the learned C.J.M, Yupia, without prior permission.

The bail application is allowed and accordingly disposed of.

JUDGE

Comparing Assistant