

GAHC040007562023



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

Case No. : BA/56/2023

Nabam Tato
S/o Nabam Tai,
R/o Jumi Vill, Balijan, PO/PS Balijan, Dist. Papum Pare, Arunachal Pradesh.

VERSUS

THE STATE OF AP and Anr.
Through the Public Prosecutor. 2:Markio Yakam
Age: 0
Occupation

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 19-07-2023

- 1.** Heard Mr. R. Sonar, learned counsel for the petitioner Nabam Tato.
- 2.** The petitioner has filed an application under Section 439 Cr.P.C., praying for bail as he is in custody since 13.09.2022 in connection with W.P.S Case No. 102/2022 under Sections 376(3)/376DA/34 of IPC read with Sections 6 & 8 of POCSO Act.
- 3.** Heard Mr. J. Tsering, learned P.P. for State of Arunachal Pradesh and Ms. N. Manju,

learned counsel for the complainant.

4. It is submitted on behalf of the petitioner that earlier the petitioner was granted interim bail to attend his BA LLB examination and thereafter the petitioner returned back to the jail. It is also submitted that the petitioner had surrendered before the police during investigation. The petitioner is a law abiding citizen and he would not flee from justice. It is also submitted that the petitioner was just above 18 years at the time of the alleged incident and he is a young boy at the stage of adolescence. The petitioner was acquainted with the victim and the victim willingly went with the petitioner for a drive. A false case has been slammed against the petitioner who is suffering and his entire professional career is at stake because he is in jail in connection a false case lodged against him.

5. The learned counsel for the complainant has raised objection stating that the allegation against the petitioner as reflected by statements of the victim u/s 161 Cr.PC as well as u/s 164 Cr.PC clearly reveal that the petitioner has committed a heinous offence. The ground of parity put forth by the petitioner cannot be considered at this stage because the allegation against the co-accused is not similar to the allegation against the present petitioner which is of serious nature.

6. I have perused the Annexure-4 relating to Case No. BA 117/2022 wherein this Court has granted interim bail to the petitioner vide order dated 24.11.2022 directing the petitioner to appear in the examination which commenced from 28.11.2022 and ended on 03.12.2022. Thereafter vide order dated 06.12.2022 in Case No. BA 117/2022 the bail petition was rejected and the afore-mentioned interim bail was cancelled. This order is marked as Annexure-4A. Vide order dated 05.01.2023 the petitioner was again granted interim bail in connection with Case No. BA 2/2023 and abiding the conditions, the petitioner again surrendered before the Court after completion of the period of interim bail. The same bail was rejected vide order dated 01.03.2023 in connection with BA Case No. 2/2023. In the present bail application interim bail was granted to the petitioner vide order dated 12.06.2023 allowing the petitioner to appear for the BA LLB 4th semester.

7. The petitioner has prayed for bail on the grounds of parity. I have also considered the submissions that the petitioner is local resident and he is not a flight risk. The petitioner has

pledged to co-operate with the investigation.

8. The petitioner has also relied on the decision of the High Court of judicature at Himachal Pradesh in the case of *Rohit Sharma v. State of Himachal Pradesh*, reported in 2020 SCC OnLine HP 2462 wherein it has been observed that :—

“ ANALYSIS AND REASONING:

8. In *Gurbaksh Singh Sibbia and others v. State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail, if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such persons on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application, and the Courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In *State of Rajasthan, Jaipur v. Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. In *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240, (Para 16), Supreme Court in Para 16, held that the delicate light of the law favours release unless countered by the negative criteria necessitating that course. In *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”

9. Reverting back to this case, it is submitted that the petitioner after completion of the interim period has surrendered before the Court and he was forwarded to custody.

10. I have considered the prayer of the petitioner. He has not violated any bail condition. He has returned to custody after completion of the period of interim bail which was granted to him.

11. In view of my foregoing discussions, petition is allowed. The petitioner is enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the trial Court under the conditions that:-

- i. the petitioner will not leave the jurisdiction of the trial Court without prior permission till completion of the trial; and
- ii. the petitioner will not exercise threats to witnesses or tamper with the evidence, failing which his bail order will be cancelled.

JUDGE

Comparing Assistant