

GAHC040010712023



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

Case No. : BA/72/2023

Md. Shabuddin
S/o SainulNessa, R/o Vill Gochi,
P.O and P.S Kesariya, Dist East Champaran, Bihar, Pin 845401

VERSUS

THE STATE OF AP
Represented by the Public Prosecutor, Arunachal Pradesh

Advocate for the Petitioner : N Dubey

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN

ORDER

29.09.2023

1. Heard Mr. N. Dubey, learned counsel for the accused. Also heard

Ms. L. Hage, learned Additional Public Prosecutor for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, **Ramzan Alam**, who is languishing in jail hazot in connection with **Chimpu P.S. Case No.18/2022, under Sections 302/201 of the Indian Penal Code**, since 06.04.2022, for grant of bail.

3. It is to be noted here that Chimpu P.S. Case No.18/2022, under Sections 302/201 of the Indian Penal Code, has been registered on the basis of one F.I.R., lodged by one Subhagan, PA to DGP, on 01.04.2022.

4. The essence of allegations made in the FIR that on 01.04.2022, at 06.59 a.m., he got telephonic call from Ct. Raj Thapa that SI Shibu George is found in his quarter, located at SRPL colony, with blood stain. Immediately, after receiving the information, he reported the matter to SDPO, Itanagar, and senior police officer.

5. Mr. N. Dubey, learned counsel for the accused, submits that the accused was arrested on 06.04.2022, and since then he has been languishing in jail hazot. Mr. Dubey further submits that the investigation has already been completed and Charge-Sheet has been laid before the learned court below against the accused and now the case is pending for trial. Mr. Dubey also submits that the learned court below has framed charge and examined as many as four witnesses out of 42 cited witnesses. Mr. Dubey

further submits that this is the second bail application preferred by the accused on the ground of (i) Length of detention as he is behind the bar for last 538 days, and (ii) also due to death of husband of his elder sister. Mr. Dubey also submits that though the accused hails from Bihar, yet, his family members are living in Itanagar and that he will abide by any condition imposed by the court. Referring to the material available against the accused Mr. Dubey submits that there is no eye witness to the occurrence and he was arrested only on the basis of statement of co-accused and that the accused is a young person and the witnesses examined till date has not implicated him and he has the burden of looking after his aged parents and now his widowed sister also. Therefore, Mr. Dubey contended to allow this petition.

6. On the other hand, Ms. L. Hage, learned Additional Public Prosecutor, submits that the accused, along with the other co-accused, had conspired to kill the SI Shibu George to grab the money laundering business and proceeds thereof of the victim and they have executed the plan meticulously, and thereafter, the present accused fled away to his native place and when police team reached his native place at Bihar, he fled away to West Bengal from where he was arrested. Ms. Hage further submits that trial has already started before the learned court below and there is every possibility of jumping bail, given his previous background of fleeing from the place of occurrence and thereafter from his native place Bihar to West Bengal. It is the further submission of Ms. Hage that if he is enlarged on bail, at this stage, then

it will be difficult for the trial court to procure his attendance and therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the Case Diary and the case record, produced before this Court. It is to be noted here that though the learned Addl. P.P. had submitted that the learned trial court has examined six witnesses and on such count the statement of two witnesses which were not available on the record was called for, yet, later on, it was clarified that only four witnesses have been examined and the same are available on the record and the summons were issued to P.W.5 and 6 only.

8. It appears that this is the second bail application preferred by the accused. The first one was rejected by this court on 12.08.2022, in BA No. 64/2022. The ground for filing this second petition is of two fold. First one is length of detention and the second is death of husband of the elder sister of the accused. It also appears from the record placed before this court that the accused is behind the bar for 538 days. The investigation has already completed and the I.O. has laid Charge-Sheet against the accused, and the learned court below has framed charge against the accused and thereafter, examined four witnesses. As charge sheet has been filed there is no question of hampering the investigation or tampering the witnesses. What is

important to be looked into at this stage is whether the accused will stand trial or not.

9. But, it appears from the record placed before this court is that the accused, after commission of the offence, he had fled away from the place of occurrence to his native place Bihar. Thereafter, when he was being searched by police at his native place he fled away to West Bengal from where he was arrested by the I.O. with great difficulty. Though the learned counsel for the accused assured that the accused will appear before the court regularly, yet, in given backdrop of his conduct, this court is unable derive satisfaction that he will not fled away again during trial.

10. The second ground, so assigned for filing this petition that the husband of his elder sister of the accused suffered demise and now he has to look after her besides his aged old parents, also seems to be not so persuading, given the nature and gravity of the offence and the manner, in which it was executed in a pre-planned manner over a period of time.

11. The offences, under which the accused was charged, are indisputably serious in nature and the punishment prescribed for the same are also severe. Ms. L. Hage, the learned Addl. P.P. has rightly pointed this out during hearing. Though, Mr. Dubey, the learned counsel for the accused, submits on the merit of the case, yet, this court deemed it not proper and appropriate to venture into the merit of the case, else it may cause prejudice to

the parties, since trial is going on.

12. In view of above, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused and accordingly, the same stands rejected.

13. However, the learned court below is directed to expedite the trial and to conclude the same with in earliest possible time and if necessary recourse has to be taken to the provision of section 309(1) Cr.P.C.

JUDGE

Comparing Assistant