

GAHC040016272023



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

Case No. : BA/125/2023

Tabum Tapir
S/o Renjen Tapir, R/o village Karo, Po Pidi and Ps Monigong, Shi-Yomi District,
Arunachal Pradesh. Phone 762988574

VERSUS

The State of AP and 2 Others
through the Public Prosecutor

2:Tadam Samnam
Age: 0
Occupation :
resident of Komte village
P.O and P.S Monigong
Shi Yomi District
Arunachal Pradesh. (Informant)

3:Victim A
Age: 0
Occupation :
D/O Shri Tarang Samnam
resident of Komte village
P.O Pidi and P.S Monigong
Shi Yomi District
Arunachal Pradesh and 21 Ors. (Victims)

Advocate for the Petitioner : Tali Umbey

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 22.12.2023

Heard Mr. R. Ingo, the learned counsel for the applicant. And also heard Ms T. Jini, the learned Additional Public Prosecutor for the State of Arunachal Pradesh and Ms N. Danggen, the learned Legal Aid counsel for respondent Nos. 2 and 3.

2. This is an application under Section 439 Cr.P.C, 1973, praying for release of the accused Smti. Marbom Ngomdir Tapir, who is in Jail since 01.09.2023, in connection with Monigong P.S. Case No. 02/2022, under Sections 10/12/14(1)/15(1)(2) of POCSO Act read with Sections 376/511/506 IPC, in POCSO Case No. 02/2023 on bail.

3. The accused, Smti. Marbom Ngomdir Tapir was arrested on 01.09.2023, in connection with aforesaid Monigong P. S. CaseNo. 02/2022, and since then she is in Jail.

4. The applicant prays for release of the accused on bail on the following grounds; i) that the accused is languishing in jail since 01.09.2023 which is 108 days as on date, ii) the minor daughter of the

accused is suffering Ventricular Septal Defect (heart disease) requiring medical treatment and she is under complete medication. Since, the attending doctor has referred the minor daughter of the accused for further treatment at TRIHMS, it is desirable that, the accused being a mother, has to take her daughter for treatment for an ailment which is a very serious and iii) all the prosecution witnesses have been examined except, one expert witness.

5. Mr. R. Ingo, the learned counsel for the applicant, referring to the above grounds submits that since all the prosecution witnesses have been examined by the Court except, the expert witness, who may not have a bearing with the accused, there is no reason as to why the accused be continued to remain in jail. He submits that since the arrest of the accused is not a punishment as such, her long incarceration is not in accordance with the law, as there is no allegation that the accused would tamper with the evidence or witness, if she is released on bail. Mr. Ingo, the learned counsel, referring to the medical prescription by the Doctor, further submits that nature of the illness is such that the accused mother would be the right person to take her daughter for further treatment.

6. To fortify his submissions, Mr. R. Ingo, the learned counsel, has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Manish Sisodia Vs. Central Bureau of Investigation*** in

criminal appeal arising out of special leave petition, (criminal) No. 8188/2023, and submits that even in serious offences, bail should be the rule and jail should be an exception.

7. On the other hand, Ms T. Jini, the learned Additional Public Prosecutor, submits that the medical ground, on which, the accused has sought for, for grant of bail is not a serious ailment, rather it is a normal follow up and routine examination, which can be taken care of by the applicant/father of the daughter. With regard to the long incarceration, she submits that in such a serious offence like present one, when the trial is on, the incarceration of 108 days by itself may not be a ground for release of accused person on bail. As regard to the completion of the prosecution evidences, except the expert witness, she submits that again by itself cannot be a ground because the seriousness of the offence alleged or charge with, is such that the accused cannot be granted bail on such ground.

8. To support her submissions, Ms T. Jini, the learned Additional Public Prosecutor has placed reliance on judgment of the Hon'ble Supreme Court in the case of ***Rajesh Ranjan Yadav @ Pappu Yavad Vs. CBI through its Director***, reported in **(2007) 1 SSC 70**.

9. Ms N. Danggen, learned Legal Aid counsel while adopting the submissions of the learned Additional Public Prosecutor, in addition,

submits that the accused has filed a bail application before this Court being BA No. 95 (AP)/2023, which has been withdrawn by the applicant, of course, with a liberty to file a fresh, on the same set of grounds for release of the accused on bail. The present bail application is more or less a successive bail application and without any new grounds but on the same grounds which has been pleaded in the earlier bail application (Supra). Therefore, unless the applicant for the accused establishes a new ground, the present application being a successive bail application, is not maintainable.

10. I have considered the submissions of the learned counsel for the parties and perused the materials available on record including the LCR.

11. On the careful perusal of the deposition of PWs, I find that PWs have clearly indicted the accused of having committed the offences of abetment and criminal intimidation. Though this court is not commenting on the veracity or otherwise of the statements of prosecution witnesses as it may influence the trial, but considering the allegations and the offences charged with it would not be proper to grant bail to the accused at this stage.

12. The ground urged by the learned counsel for the applicant with regard to the medical treatment of the daughter of the accused is found to be not convincing inasmuch as the medical prescription annexed to

the bail application reflects that the Doctor has recommended for follow up and routine examination which is to be done at TRIHMS, Naharlagun, in the Department of Cardiology. It is also informed that the applicant is the husband of the accused and the father of ailing 9 years old daughter for which the present applicant can very well take care of the treatment of his daughter.

13. Having considered the ground of long incarceration of the accused since 01.09.2023, which is 108 days, I am of the view that such a long incarceration by itself cannot be a ground for release of the accused on bail in such a heinous and serious offences charged against the accused person.

14. Having regard to the ground of completion of the deposition of PWs, except the expert witness, I am also of the view that it would not be a proposition of law that because the examination of the PWs have been completed so the accused should be enlarged on bail, even if, the offences alleged is serious and heinous. This Court finds that apart from above referred 3 grounds, the learned counsel for the applicant has failed to urge any other grounds for grant of bail to the accused person in the present case.

15. This Court noticed that the accused person has moved a bail application being BA No. 95/2023 before filing the present bail application. On 13.10.2023, the learned counsel for the applicant has prayed for withdrawal of the said bail application, which was allowed to be withdrawn, of course, with a liberty to file a fresh petition. On perusal of the grounds taken in the said bail application, the grounds taken in the present application is *pari-materia* with the grounds taken in the said bail application. Though the learned legal aid counsel submits that since the applicant has filed the present bail application for release of the accused person on the same set of grounds amount to a successive bail application, which is liable to be rejected on such technicality, keeping aside the merit, this Court is not inclined to delve on such submission, which is kept open for determination in an appropriate proceeding as the present bail application is being considered on its merit.

16. It is settled position of law that the matters to be considered in an application for bail are whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence, the nature and gravity of the charge, severity of the punishment in the event of conviction, danger of accused absconding or fleeing, if release on bail, character, behaviour, means, position and standing of the accused, likelihood of the offence being repeated,

reasonable apprehension of the witnesses being tampered with and danger of course, of justice being thwarted by grant of bail.

17. It is also settled in law that there is no unconditional rule about when a bail should be granted by the Court. There is also no rule that because a long period of imprisonment has expired, bail must be necessarily be granted. It is further not a rule that just because all the PWs have been examined and the case has reached examination of witnesses by accused in defence, bail should be granted. While considering the bail application, the balance has to be struck between the right of an individual liberty and the interest of the society.

18. The Hon'ble Supreme Court, time and again held that there is no absolute and unconditional rule about when a Court should grant a bail and when 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 because a long period of imprisonment has expired bail must be necessarily granted. Similarly, just because of the PWs have been examined, except, the expert witness and the next stage will be examination, under Section 313 Cr.P.C., by itself not a ground for grant of bail to the accused person.

19. This Court is not oblivious that Article 21 of Constitution is of great importance because it ensures the fundamental right to individual liberty, but, at the same time the balance is to be struck between the right of an individual liberty and the interest of society. It is true that no right can be absolute and reasonable restriction can be placed on them. While it is also true that one of the consideration in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration of the facts and circumstances of each case, the interest of the society. Mere long incarceration by itself would not be a ground for grant of bail to the accused.

20. In the present case, as noted above, the learned counsel for the applicant has urged that since the applicant is incarceration for a long period of 108 days and all the PWs have been examined, except the expert witness as well as the accused has to take her 9 years old ailing daughter for treatment at the TRIHMS, Naharlagun on being recommended by the Doctor, I am of the considered view that such grounds are not sufficient for grant of bail to the accused person inasmuch as the offence charged with is heinous and serious in nature which effects the interest of society coupled with the fact that the PWs prima facie points towards the guilt of the accused. Thus, I am of the considered view that the grounds for grant of bail to the accused person

are not sufficient grounds for release of the accused person on bail.

21. I have perused the judgment of the Hon'ble Supreme Court in **Manish Sisodia** (supra) as relied on by the learned counsel for the applicant. The observation of the Hon'ble Supreme Court in the above case is completely on different context and on facts and circumstances of that case. Thus, same has no application in the facts and circumstances of the present case.

22. In view of the above, this Court is of the considered opinion that the petitioner has failed to make out a case for grant of bail to the accused, namely, Smti Marbom Ngomdir Tapir. Thus, this bail application is rejected.

23. Accordingly, this bail application stands dismissed.

JUDGE

Comparing Assistant