

GAHC010006202023



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

Case No. : Bail Appln./174/2023

SULTAN ALI AHMED
S/O- KAZIMUDDIN AHMED, R/O- VILL- BAIKHUN GAON, P.O-
DHALIGAON, P.S- DHALIGAON, DIST CHIRANG, ASSAM, PIN- 783385

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22-03-2023

Heard Mr. M. Biswas, learned counsel for the petitioner. Also heard Mr. Bankim Sarma, the learned Addl. P.P. for the State.

2. The petitioner, namely, Sultan Ali Ahmed, who was arrested on 16.08.2022 in connection with Dhaligaon P.S. Case No. 225/2021, under

sections 120B/302/307/325/427 IPC is praying for regular bail under section 439 Cr.P.C.

3. The learned counsel for the petitioner has submitted that the petitioner had voluntarily surrendered before the police. In the said context, it has been submitted that the petitioner had filed a Criminal Petition under section 482 Cr.P.C. and this Court by order dated 08.07.2022, passed in CrI. Rev.P. No. 354/2022, had suspended the NBWA issued against the petitioner till 14.07.2022, by further providing that if the petitioner did not appear before the learned Court below on 14.07.2022, the learned Court below shall pass an appropriate order as regard to the issuance of fresh NBWA against the petitioner and three other petitioners therein. However, as the petitioner was suffering from Covid like symptoms and therefore, after obtaining Covid-19 negative certificate, he had surrendered before the learned Court below on 16.08.2022, and then he was taken into custody.

4. It is also submitted that charge-sheet has been submitted in this case on 18.04.2022 and the case is still at the stage of committal proceeding and therefore, as the charge-sheet reflects that there are 40 listed witnesses to be examined, there is no likelihood of an early trial.

5. The scanned copy of the case diary, received from the Court of the learned Addl. Chief Judicial Magistrate, Kajalgaon, Chirang has been perused by the learned Addl. P.P. and he has objected to the prayer for bail on the ground that no new circumstances has been made out in this case to enlarge the petitioner on bail.

6. From the case diary and charge-sheet, it appears that on 23.08.2021, the informant along with three others had gone to the IOCL No. 2 Gate in their vehicle to look out for their oil tankers. At that time, one jeep belonging to the present petitioner had hit the vehicle of the informant and at that moment, another vehicle also came. From the said two vehicles, seven persons, including the petitioner herein had attacked the informant and other three persons with iron rods and patti as a result of which one Abdul Malek received grievous injuries and he died on the spot and two other persons accompanying the informant had also received grievous injuries.

7. As per the post mortem report, the opinion of the Doctor was that "death was due to intracranial hemorrhage as a result of injuries sustained as described. All the injuries are ante mortem in nature and caused by blunt force impact." The description of injuries are as follows:-

- a. *Laceration of size (15 x 1 x 1.5) cm present over the left frontoparietal region of skull (scalp).*
- b. *Laceration of size (4 x 2 x 1.5) cm present over the back of left side of skull (scalp).*
- c. *Laceration of size (11 x 2.5 x 2) cm present over the back of lower level of trunk.*
- d. *Abrasion of size (40 x 6) cm present over the lateral side of right upper limb.*
- e. *Bruise: (1) Bruise of size (4.0 x 2.5) cm present over the left forehead, (2) Bruise of size (2.5 x 2.5) cm present over the lateral side of lateral canthus of left eye, (3) Bruise of size (4 x 2) cm present over the lateral side of right eye.*
- f. *Brain: Sub-Dural hemorrhage of size (2 x 2.5) cm present over the left side. Sub-arachnoid hemorrhage present in the sub-archnoid space. Intraparenchymal hemorrhage of size (2 x 2) cm present over the left hemisphere of brain.*

8. The prayer for bail to the petitioner was previously rejected by order dated 28.09.2022, passed in B.A. 2365/2022 on three grounds. Firstly, there was a strong apprehension that if released on bail, the petitioner is likely

to abscond to evade trial. Secondly, the conduct of the petitioner in not appearing before the learned Court below despite order dated 08.07.2022 in Crl.Rev.P. 354/2022 was not at all appreciated because if he had suffered any illness, the petitioner ought to have sought for extension of time from this Court, which was not done, and thereby the order of this Court was disregarded by the petitioner, which disentitled him to bail. Thirdly, if granted bail, the informant's side would be under constant risk as to their life.

9. Nonetheless, the learned counsel for the petitioner has demonstrated that from the date of his arrest, the petitioner has spent about 217 days in custody. It is also noted that as the case is still at the committal stage, there is no chance of an early trial as 40 prosecution witnesses are listed in the charge-sheet. Moreover, it has been demonstrated that except for the petitioner, all other charge-sheeted co-accused have been released on bail.

10. Hence, the Court is of the considered opinion that in light of the reasons assigned in para-9 above, the Court is inclined to release the petitioner, namely, Sultan Ali Ahmed on bail in connection with PRC Case No. 86/2022 (corresponding to Dhaligaon P.S. Case No. 225/2021) under sections 120B, 302, 307, 323, 427 IPC, on his furnishing a bail bond of Rs.1,00,000/- (Rupees one lakh only), with two solvent sureties of like amount to the satisfaction of the learned Addl. Chief Judicial Magistrate, Chirang, Kajalgaon, if committal proceeding is still pending and if the case is committed to the Court of Sessions Judge, Chirang, Kajalgaon, the acceptance of bail would be by the learned trial Court.

11. Out of the two bailors, one should offer his/her immovable property as security for grant of bail.

12. Bail is granted on the following conditions:-

- a. The petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of.
- b. In the event, the petitioner is unable to attend the learned Committal/ Trial Court on any date fixed, he shall ensure that he is represented by his learned counsel and also give an undertaking that he shall not dispute the identity of the witnesses or his own identity, when any witnesses are examined in his absence.
- c. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any of the prosecution witnesses so as to dissuade them from disclosing such facts to the Court.
- d. That the bail bonds submitted by the accused petitioner shall be supported by Voter Identity Card/Passport/ Aadhaar card, and/or any other proof of identity so as to ascertain his permanent address to the satisfaction of the learned trial Court. The learned trial Court after verification of any of the aforesaid documents relating to permanent address to its satisfaction shall return the same on retaining the compared scanned copy and/or photocopy thereof in the record.
- e. The petitioner shall not leave the jurisdiction of Chirang District without prior permission from the learned Committal/ Trial Court.
- f. If any of the condition for grant of bail is not complied with, it would be open to the Committal/ Trial Court to cancel the bail granted to the petitioner and issue NBWA against the petitioner to secure his presence during Committal proceeding and/or trial.

13. Bail application is disposed of.

JUDGE

Comparing Assistant