

GAHC010008942023



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

Case No. : Bail Appln./237/2023

RAFIKUL ISLAM@RAFIKUL ALI
S/O- HAIDAR ALI, VILL- JAKHLIBIL PATHAR KUYAPARA (NANKE
KHAGRABARI), P.S. GOBARDHANA, DIST.- BAKSA, BTR (ASSAM)

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. H ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

09.03.2023

Heard Mr. H. Ali, learned counsel for the petitioner as well as Mr. B.B. Gogoi, learned Addl. P.P. appearing for the State.

2. The petitioner, namely, Rafikul Islam @ Rafikul Ali, has filed an

application under Section 439 Cr.P.C. with prayer for bail as he is in judicial custody since 17.07.2022 in connection with Gabordhana P.S. Case No. 41/2022, Sessions Case No. 219/2022, under Sections 304(B)/302/34 IPC.

3. I have considered the submissions at the bar.

4. It is submitted on behalf of the petitioner that the FIR was lodged on 18.03.2022, whereas the incident occurred on 25.02.2022. The deceased was under treatment as a result of burned injuries sustained by her, but no dying declaration was recorded. The FIR was an after thought. The co-accused are already on bail. The petitioner has pledged to co-operate with the trial.

5. The learned Addl.P.P. has raised serious objections stating that overt act has been attributed to the petitioner in the FIR as well as by the witnesses whose statements were recorded under Section 161 Cr.P.C.

6. The FIR clearly reveals that the petitioner subjected his wife to cruelty. The post-mortem report reveals 35% burn injuries and septicaemia as a result of the burn injuries. The post-mortem was performed on 18.03.2022 and the victim succumbed to her injuries on 17.03.2022.

7. I have given my anxious considerations to the submissions at the bar.

8. It is apparent that this is not a case where trial or investigation has been protracted.

9. The witnesses are yet to be examined. This case falls under the description of heinous offence.

10. I have also perused the statement of the witnesses under Section 161 Cr.P.C. and the charge-sheet laid against the petitioner.

11. I have also perused the scanned copies of the case diary and the LCR.

12. I have considered the submissions at the bar with circumspection.

13. The incident allegedly occurred on 17.03.2022 and the FIR was lodged on 18.03.2022. The post-mortem was performed on 18.03.2022 and charge-sheet was laid on 31.08.2022. It is true that witnesses are not yet examined and it is also true that the petitioner is in jail since 17.07.2022. This case cannot be considered as a case where trial is being protracted at this stage.

14. I have circumspected the magnitude of the offence and the role attributed to the petitioner.

15. At this stage, I am constrained to reject the petition with prayer for bail. However, in case of procrastination of trial, the petitioner is at liberty to apply for bail.

JUDGE

Comparing Assistant