

GAHC010022252023



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

Case No. : Bail Appln./401/2023

YOGENDRA PANDEY
S/O LT. MAHADEV PANDEY R/O VILL. HARSULAH, P.S. KOPA DIST.
CHAPRA BIHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 15-02-2023

Heard Mr. B. K. Mahajan, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public for the State of Assam and Mr. S. Choudhury, learned counsel for the informant.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973, for grant of bail to the accused/petitioner, who has been languishing in jail hajot since 09.01.2023 in connection with Sonai P.S. Case No. 06/2023.

3. It is submitted by the learned counsel for the petitioner, Mr. B. K. Mahajan, that the present accused/petitioner was arrested in connection with this case on 09.01.2023 and after his police remand for the period of 2 (two) days, he was sent for judicial custody and since 11.01.2023, he is languishing in jail hajot. The accused/petitioner was working in the capacity of Audit Officer of the State Bank of India and was lastly posted at Circle Audit Office, State Bank of India, and during his tenure of service, he was discharging his duties with utmost sincerity and dedication without any complaint whatsoever from any corner. He has no criminal antecedent and in the present case, he has been falsely implicated. More so, from the forwarding report, it reveals that no offence under Section 306 of the Indian penal Code has been made out against the present accused/petitioner as the most important ingredients of Section 107 of the Indian Penal Code is missing and he has been arrested in connection with this case purely on mechanical manner. From the F.I.R. also, it reveals that the victim/deceased was under depression for few months prior to the incident and

was seemed to be extremely under pressure and anxiety. But the present petitioner, as an Audit Officer, was working outside the station and in no circumstances, there was any abetment or instigation from the side of the accused/petitioner to commit suicide by the deceased.

4. Further it is submitted by the learned counsel for the petitioner that vide order dated 30.10.2023, the learned Sessions Judge, Cachar, Silchar, has rejected the bail prayer of the petitioner only considering the materials in the Case Diary that as an Auditor, the present accused/petitioner demanded an iPhone from the deceased as bribe and misbehaved with him uttering defamatory and abusive words regarding the integrity of the deceased. But that cannot be the only criteria to fulfill the abetment under Section 107 of the Indian Penal Code and also to fulfill the ingredients of Section 106 of the Indian Penal Code, which is most essential ingredients of the said Section. More so, as stated above, the present accused/petitioner had arrived at the Branch at Guwahati on 01.01.2023, which is just 6 (six) days before the unfortunate incident. The present accused/petitioner cannot, under any circumstances, played any role in the anxiety or pressure faced by the deceased as he was not present during that time and as such, the present accused/petitioner is not at all liable for any unfortunate incident or commitment of suicide by the victim/deceased. The accused/petitioner is behind the bar since 09.01.2023 and thus, the I.O. has got sufficient time for his custodial interrogation and considering the nature of allegation, further custodial interrogation of the accused/petitioner is not at all necessary. Further is submitted that the accused/petitioner is also an elderly person with various health issues and he is also a heart patient which is already reflected in the order passed by the learned

Magistrate at the time of forwarding the accused/petitioner to judicial custody. The present petition is supported with some medical documents in regards to the various health issued of the present accused/petitioner.

5. The learned counsel for the petitioner further relied on a decision of Hon'ble Supreme Court in **Shabbir Hussain Vs. State of Madhya Pradesh & Ors.**, reported in **2021 SCC OnLine SC 743**, and further emphasized on paragraph Nos. 4, 5 & 6, which reads as under:

"4. In order to bring a case within the provision of Section 306IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

5. Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal, (2010) 1 SCC 707].

6. Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605]."

6. Relying on the aforesaid decision of the Hon'ble Supreme Court, it is submitted the learned counsel for the petitioner that the person who is said to have abetted the commission of suicide must have played an active role by an

act of instigating or by doing a certain act to facilitate the commission of suicide. But, here in the instant case, as per the ingredients of the F.I.R. as well as the order passed by the learned Sessions Judge, Cachar, Silchar, it is seen that there is no such mention about the active role or an act of instigation from the side of the accused/petitioner to commit suicide or to fulfill the ingredients of abetment.

7. The learned Additional Public Prosecutor, Mr. D. Das, has submitted that from the Case Diary, it reveals that the cause of death could not be ascertained yet as the report of the viscera, sent to the FSL, could not be collected by the I.O. and for which, the post-mortem report also not completed though from the inquest report, it is very much evident that ligature mark is present over the neck of the deceased. Further submission is that from the materials in the Case Diary, it is seen that the accused is liable for committing suicide by the deceased by hanging.

8. The learned counsel appearing on behalf of the informant, Mr. S. Choudhury, has submitted that the abetment to commit suicide, as per the required ingredients of Section 306 of the Indian Penal Code, is different based on the cases. The proximity of the death has to be considered and from the order passed by the learned Sessions Judge, Cachar, Silchar, it is very much evident that the present accused/petitioner demanded iPhone and also abused him with some slang languages. It is also submitted that the F.I.R. mentioned about the deceased being under extreme mental pressure and depression and that for the act of the present accused/petitioner, along with others staffs, the deceased had to commit suicide.

9. After hearing the submissions of learned counsels appearing for the parties, I have perused the Case Diary thoroughly and it is seen that the I.O. has collected sufficient incriminating materials against the present accused/petitioner. It reveals that on 06.01.2023 (Friday), the victim was very depressed as he was scolded in front of the staff of the bank by the present accused/petitioner. Apart from that, there is also the demand of iPhone by the present accused/petitioner and on the day of incident, i.e. on 06.01.2023, the deceased was crying and he was not even in a position to go back home and was seemed to be very depressed. Thus, from the investigation done so far, there are incriminating materials showing the involvement of the present accused/petitioner in the alleged offence.

10. More so, the I.O. has submitted his bail objection, wherein, it is stated that the accused/petitioner, being in the position of higher official rank, there is every probability of influencing the Branch Manager of the other bank branches or the bank officials and also there is every probability of hampering or tampering the witnesses and influencing the immediate bank officers or officials if he is enlarged on bail. The investigation is still under progress and some more evidences are yet to be collected by the I.O. and in the event of enlargement of the accused/petitioner on bail, there is possibility of hampering the further investigation of the case. Accordingly, the I.O. has prayed not to enlarge the accused/petitioner on bail at this stage for the just and proper investigation of the case.

11. It is a fact that the accused/petitioner, being an Audit Officer, had to visit

to the other places and he visited at Guwahati on 01.01.2023 and the incident, which took place on 06.01.2023, had happen soon after his arrival, as stated by the witnesses. The investigation done so far and materials collected, as revealed from the Case Diary, at this stage, do not suggest the deceased committed suicide otherwise than the compulsion by the act of the accused.

12. So, considering the incriminating materials available in the Case Diary, bail objection filed by the I.O. and also considering the gravity of the offence and the stage of the investigation, coupled with the fact that further interrogation of the accused/petitioner may be necessary to unearth some more facts of the case and for the interest of just and proper investigation of the case, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused/petitioner at this stage and accordingly, the same stands rejected.

13. However, considering the submission made by the learned counsel for the petitioner regarding the heart disease of the petitioner, the jail authorities are hereby asked to provide necessary treatment/medicine to the petitioner, if necessary.

The Case Diary be sent back.

JUDGE

Comparing Assistant