

GAHC010022332023



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

Case No. : Bail Appln./398/2023

BUDHESWAR LAHAN
S/O- LATE DINA LAHAN, R/O- VILL.- JORHATIA GAON, P.S. SIMEN
CHAPORI, DIST. DHEMAJI, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. U DUTTA
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

30-06-2023

Heard Mr. U Dutta, learned counsel for the petitioner and Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam for the State.

By this application under Section 439 CrPC the petitioner, namely, **Budheswar Lahan**, Son of Late Dina Lahan, is seeking bail in connection with **Sessions Case No. 54(DH)/2021** registered under Sections 449/302/34 of the IPC arising out of Simen Chapori Police Station Case No. 31/2021 corresponding to G.R. No. 136/2021 (PRC No. 95/2021) presently pending before the Court of learned Sessions Judge, Dhemaji; in which he is in custody since 12.06.2021.

As per the FIR of the case lodged by the complainant on 12.06.2021 before the Officer-In-Charge of Simen Chapori Police Station, father of the complainant Rupram Lahon resides with her mother at village-Jorhatiya at Simen Chapori and on 11.06.2021 two FIR named accused persons

in the evening assaulted her father with sharp weapon (Kopida) and grievously injured him. While her father was taken for a better treatment to the hospital, he succumbed to those injuries sustained by him. The said information was accordingly registered as Simen Chapori Police Station Case No. 31/2021 under Sections 449/302/34 of the IPC.

After completion of the investigation, the Investigating Officer of said Simen Chapori P.S. Case No. 31/2021 submitted the Charge-Sheet on 24.09.2021 vide Charge-Sheet No. 27/2021.

Learned Judicial Magistrate First Class, Jonai by order dated 26.10.2021 committed the said PRC Case No. 95/2021 (G.R. No. 136/2021) to the Court of learned Sessions Judge, Dhemaji, wherein the same was re-registered as Sessions Case No. 54(DH)/2021.

By order dated 08.12.2021 the learned Sessions Judge, Dhemaji framed charges under Sections 449/302/34 IPC that were read over and explained to them and the accused persons pleaded not guilty and claimed to be tried.

Petitioner placed before the Court that the said Sessions case was fixed on 22.12.2021, 05.01.2022, 02.02.2022, 03.03.2022, 29.03.2022, 26.04.2022, 23.05.2022, 15.06.2022, 12.07.2022, 02.08.2022, 26.08.2022, 21.09.2022, 01.10.2022, 31.10.2022 and 23.11.2022 for evidence of the prosecution and in spite of issuance of repeated summons, the witnesses for the prosecution remained absent and that evidence of the prosecution side has not yet been adduced till date.

Petitioner also stated that he is in custody since 12.06.2021, Charge-Sheet in the case was filed on 24.09.2021, charges have also been framed and therefore, his further detention in connection with the said case is no longer required as the investigation of the case has been completed by the investigating agency. Hence, this bail application by the petitioner, named above.

Perused the records of PRC Case No. 95/2021 (G.R. No. 136/2021) that was called for from the office of the learned Sessions Judge, Dhemaji.

From the records of the case it is seen that out of the 13 (thirteen) Nos. of prosecution witnesses mentioned in the Charge-Sheet of the case, evidence of two prosecution witnesses, PW-1 and PW-2, the eye witness of the case, PW-1 and the complainant were recorded on

24.04.2023 and they were also cross-examined by the defence.

Also perused the statement recorded under Section 164 CrPC by the learned Judicial Magistrate First Class, Jonai on 14.06.2021 of Ambika Lahan, neighbor of the deceased who is an eye witness to the incident and who is also a named prosecution witness in the Charge-Sheet whose evidence is yet to be recorded.

Also perused the Post-Mortem Examination Report of the person of the deceased dated 12.06.2021 which reflects that the person concerned died due to Coma following head injuries sustained by him that were ante-mortem in nature and caused by heavy sharp cutting weapon and homicidal in nature.

The said Post-Mortem Report reflects that the deceased sustained (i) Cut injury of size 15x3 CM x brain deep over right side of head; cutting the right frontal, parietal and temporal bone and underlying tissues, (ii) cut injury of size 12x2 CM x brain deep over left, posterior side of head; cutting the left parietal and occipital bone and underlying tissues, (iii) incised wound of length of over 3 CM over right forehead (iv) incised wound of over 2 CM over right palm dorsal aspect, (v) subdural hemorrhage bilaterally present in the membrane.

The FSL report dated 17.07.2021 clarified that the Dao seized in the case containing stain of suspected blood and one old blue colored (yellow) pillow cover containing stain of suspected blood seized in the case gave the positive test for human blood of Group-'B'.

In her statement made before the learned Magistrate recorded under Section 164 CrPC on 14.06.2021 as well as in her examination-in-chief recorded by the learned Trial Court on 24.04.2023 the PW-1, widow of the deceased, eye witness to the incident clearly stated that the petitioner caught hold of her husband and the other accused persons gave Khamti Dao blows upon the back side of the neck and on the head above the right ear of her husband.

The records revealed that the petitioner engaged his own counsel and the other accused was provided with a Legal Aid counsel.

From the records of the case it is seen that both the accused persons were produced through Video Conference (due to Covid-19) before the learned Judicial Magistrate First Class, Jonai on 20.09.2021 in said G.R. Case No. 136/2021, arising out of Simen Chapori Police Station

Case No. 31/2021 and the learned Magistrate observed that although 90 days had surpassed since the day of arrest but, report in final form remained to be submitted by the Investigating Officer of the said case.

By the said order dated 20.09.2021 the learned JMFC, Jonai directed the Legal Aid counsel engaged on behalf of the other accused to take necessary steps in that regard and accordingly, the said Legal Aid counsel on 24.09.2021 filed a bail petition on behalf of the other accused of the case. However, on 24.09.2021 it could not be considered on the absence of the public prosecutor.

But the said records reveals that nothing was brought to the notice of the petitioner with regard to his right of default bail. Subsequently, Charge-Sheet was filed on 24.09.2021 which the learned Magistrate took note of on 05.10.2021.

In the case of "*Union of India -Vs.- Nirala Yadav*" reported in (2014) 9 SCC 457, the Hon'ble Supreme Court referring the Judgment of the same Hon'ble Court in the case of "*Uday Mohanlal Acharya -Vs.- State of Maharashtra*" reported in (2001) 5 SCC 453 has held that – *on the expiry of the period of 90 days or 60 days, as the case may be, and indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.*

In the case of "*Rakesh Kumar Pal -Vs- State of Assam*" reported in (2017) 15 SCC 67, the Hon'ble Supreme Court consisting of three Hon'ble Judges has laid down that – *It would equally be duty and responsibility of a Court on coming to know that the accused persons before it is entitled to default bail, to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by the Court as is evidenced by decision in the case of "Khatri -Vs.- State of Bihar" reported in (1981) 1 SCC 627 and other connected cases as well as in the case of "Union of India -Vs.- Nirala Yadav "* (supra).

Considering the judgments of the Hon'ble Apex Court and though the learned Magistrate on 20.09.2021 inspite of being aware of the fact that the investigating authority did not submit the Charge-Sheet in the case even after 90 days of arrest of the petitioner but did not inform him of his indefeasible right and his entitlement of the default bail for not filing the Charge-Sheet within

90 days from the date of his arrest on 12.06.2021, the Court is of the view that the petitioner is entitled to the grant of default bail in said Sessions Case No. 54(DH)/2021 arising out of Simen Chapori Police Station Case No. 31/2021 on the facts and circumstances of the case though the petitioner did not file any application for default bail nor his application for bail was pending at the relevant point of time before the concerned Magistrate.

For the reasons above, this bail application of the petitioner in said Sessions Case No. 54(DH)/2021 is accepted.

Accordingly, the petitioner, namely, **Budheswar Lahan**, be released on bail in the Sessions Case No. 54(DH)/2021 arising out of Simen Chapori Police Station Case No. 31/2021 presently pending before the Court of learned Sessions Judge, Dhemaji and the said learned Trial Judge is directed to release the petitioner on default bail on such terms and conditions as the said Court may consider deem fit and proper considering his involvement in the alleged crime in the said case.

It is hereby made clear that this order shall not prohibit or otherwise prevent the arrest or re-arrest of the petitioner, Budheswar Lahan on cogent grounds in respect of the subjects charged in the case and upon arrest or re-arrest, the petitioner shall be entitled to prefer petition for grant of regular bail and in the event of such application for his regular bail, the same shall be considered on its own merit. It is further provided that the present order of default bail of the petitioner will not impact on his arrest in any other case.

Return the case diary herewith.

Accordingly, this bail application stands allowed to the extent above.

JUDGE

Comparing Assistant