

GAHC010027112023



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

Case No. : AB/421/2023

BIREN DEORI AND ANR.
S/O- GOBALASING DEORI, R/O- VILL.- KASIKATA, P.S. BIHPURIA, DIST.
LAKHIMPUR, ASSAM

2: SUBAL DEORI
S/O- BUBULA DEORI
R/O- VILL.- KASIKATA
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSA

VERSUS

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

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 23-06-2023

- 1.** Heard Mr. K. Sarma, learned counsel for the petitioners.

2. By this application under Section 438 of the Code of Criminal Procedure, 1973 [Cr.PC], the petitioners, namely, [1] Biren Deori and [2] Subal Deori have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Narayanpur Police Station Case No. 03/2023 under Sections 302/34 IPC.

3. Heard Mr. K.K. Das, learned Addl. P.P. for the State of Assam.

4. I have considered the submissions at the bar with circumspection and I have also scrutinised the Case Diary.

5. The learned Addl. P.P. has raised serious objection stating that the circumstantial evidence forms a complete chain and the petitioners are responsible for the death of the deceased.

6. The FIR unfolds that on 18.01.2023 at around 8 PM the informant's nephew Rakesh Roshan Bora suddenly passed away in his own residence. The informant took the deceased to the hospital and learnt that the deceased sustained injuries on his neck, fingers and back side of the body. The mother of the deceased had an extra-marital affair with the petitioner Biren Deori. The deceased disapproved this relationship and started fighting with them and so he was threatened by the petitioners. On the backdrop of such strong circumstances against the petitioners, FIR was lodged by the informant.

7. The post-mortem report reveals that the deceased sustained -

- i. Abrasion of size 0.75 cm X 0.75 cm over the right side of face, 1 cm below right eye.
- ii. Abrasion of size 0.75 cm X 0.5 cm over right eye brow.
- iii. Abrasion in 0.25 cm X 0.25 cm over his right face. The ligature mark on his neck.

8. One ligature mark on his neck was prominent and non-continuous of size 6 cm X 0.75 cm, 6.5 cm above sternal notch.

The second ligature mark is less prominent over anterior aspect of neck of size 9 cm X 0.75 cm. which is above the ligature mark No. 1 and paretial to the ligature mark No. 1.

9. No opinion was given by the Medical Officer who conducted the post-mortem as Forensic Report was not submitted. Finally, opinion was given after Forensic Report was received. It was opined by the Medical Officer that death was due to asphyxia resulting from

application of ligature around the neck and homicidal in nature. The injuries described were anti-mortem and caused by blunt force impact. No poison was found in the viscera forwarded for Forensic Report.

10. The learned Addl. P.P. has raised serious objection stating that the statement of the complainant as well as the FIR clearly incriminates the petitioner Biren Deori.

11. A scrutiny of the Case Diary reveals that indeed there are incriminating materials against the petitioner Biren Deori. Both the petitioners are booked under a heinous offence. It appears that investigation may be adversely affected if the petitioner Biren Deori is insulated by an order of pre-arrest bail. The provisions u/s 438 Cr.PC cannot be exercised in an untrammelled manner.

12. In view of my foregoing discussions, the petition under Section 438 Cr.PC filed by Biren Deori with prayer of pre-arrest bail is rejected at this stage of investigation.

13. On the other hand the interim order dated 10.04.2023 granting interim bail to the petitioner Subal Deori is hereby made absolute.

Send back the Case Diary.

JUDGE

Comparing Assistant