

GAHC010039172023



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

Case No. : AB/615/2023

FAJAL HAQUE
S/O NUR MIYA
R/O VILL- MANDIRA NC
P.S. BOKO
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

13.06.2023

Heard Mr. N.J. Dutta, learned counsel for the petitioner and Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. By this application under Section 438 of Cr. P.C., the petitioner Fajal Haque

is seeking Anticipatory Bail apprehending arrest in connection with dated 29.01.2023 lodged by the informant, who is the brother of the deceased. It is alleged in the said FIR that the deceased was married to accused no.1 but she had an illicit relationship with the accused person no.2 (who is the petitioner herein) and the two conspired and mixed poison with the food which was offered to the deceased. It is alleged that both the accused persons are responsible for the death of the deceased, who is the brother of the informant. The said FIR was registered as Boko P.S. Case No.36/2023 under Section 120(B)/302 IPC.

3. The learned counsel for the petitioner submits that the petitioner is a grocery shop owner and he had sold some grocery items to the deceased and the accused no.1 and there is an outstanding amount of about Rs.67,000/- which is required to be paid by the family of the deceased. In this connection, the learned counsel for the petitioner has referred to Page-14 of the bail petition enclosing the copy of the licence issued under the Assam Panchayat Rules in the name of the petitioner, who submit that he is the owner of the grocery shop within the same locality.

4. This Court earlier called for the Case Diary along with the FSL Report. Case Diary Called for has been produced by the learned Additional Public Prosecutor along with the FSL Report.

5. Upon perusal of the case dairy along with the FSL Report, it is seen that the opinion of the Post Mortem Report was kept in abeyance till receipt of the FSL Report. FSL Report was received where the opinion is that there is no poison found in the viscera sent for examination.

6. Upon due perusal of the Case Diary, it appears that perhaps the deceased expired on natural causes or some ailment. It is not discernable from a perusal of the Case Diary including Post Mortem Report and FSL Report that the deceased expired due to poison as alleged. Upon due perusal of the Case Diary, it is seen that the investigation has progressed in the matter, however upon perusal of the CD and no materials are seen at this stage which suggests that grant of anticipatory bail as prayed for by the petitioner will have adverse effect in the investigation that is being carried on.

7. Accordingly, this Court allows the anticipatory bail petition and orders that in the event of arrest of the petitioner, he shall be released on furnishing a bail bond of Rs.30,000/- (Rupees thirty thousand) only with one (1) local surety of like amount subject to the satisfaction of the Arresting Authority. The bail granted however, is subjected to the following conditions:-

(i) That the petitioner shall appear before the investigating Officer within 7 (seven) days from today;

(ii) That the petitioner shall not hamper or tamper with the investigation in any manner;

(iii) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police office; and

(iv) That the petitioner shall not leave the jurisdiction of Boko P.S. without obtaining prior written permission from the concerned investigating officer of the case.

8. If any of the conditions are found to be violated by the petitioner, then the

Investigating Officer shall be at liberty to seek cancellation of the bail granted to the petitioner.

9. Anticipatory bail petition is accordingly disposed of.

10. Return the Case Diary.

JUDGE

Comparing Assistant