

GAHC010047972023



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

Case No. : Bail Appln./843/2023

RAJIB BORAH
S/O- SRI DEBA BORAH, R/O- VILL.- JIAMORIA, P.O. AND P.S.
DHAKUAKHANA, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P BORDOLOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27-03-2023

Heard Mr. P. Bordoloi, learned counsel for the petitioner and also heard Mr. M.P. Goswami, the learned Addl. P.P. for the State.

2. The petitioner, who was arrested on 31.12.2021, in connection

with Dhakuakhana P.S. Case No. 2/2022, corresponding to GR Case No. 2/2022, under sections 447/326/307 IPC with added section 302 IPC, has prayed for regular bail under section 439 Cr.P.C. The said case is tried as Sessions Case No. 20 (N.L.)/2022, under section 302 IPC.

3. The learned counsel for the petitioner has submitted that previously when the petitioner's bail application, being BA No. 1528/2022 was rejected by this Court by order dated 25.08.2022, the petitioner was in custody for 236 days, by which time only 7 (seven) witnesses could be examined. However, by passage of time, the petitioner has spent about 451 days in custody, yet till date only 7 (seven) witnesses have been examined. It is submitted that there is no likelihood that there would be an early conclusion of trial. Therefore, it has been submitted that in order to prepare for trial, the prayer for bail should be allowed. It was submitted that the petitioner would abide by any condition that would be imposed on him in the event of grant of bail.

4. The learned Addl. PP has referred to the scanned copy of case records that was called for in connection with BA No. 1528/2022, and has opposed the prayed for bail.

5. In light of the nature of evidence that appears against the petitioner, there appears to be a strong presumption against the petitioner.

6. It would also be relevant to quote the provision of Section 436A Cr.P.C., which is as follows:-

“436A. Maximum period for which an under trial prisoner can be

detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

7. It would be appropriate to refer to the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, wherein the Supreme Court of India had observed that where the undertrial is charged with offence punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount. However, for the offences punishable with death or imprisonment for life, bail is required to be granted on merit, and on case to case basis.

8. The case of the prosecution is that on 31.12.2021, the petitioner had trespassed into the house of the brother of the informant; assaulted him with bamboo stick; and also tried to strangulate him. The victim was taken to hospital in serious condition and he eventually died. The case diary discloses existence of the dying statement of the deceased, implicating the

petitioner of attacking him.

9. The Court takes note of the submissions made by the learned counsel for the petitioner that out of 11 prosecution witnesses, only 7 (seven) witnesses have been examined so far, which was the position that existed on 13.07.2022. Therefore, only 4 (four) witnesses remains to be examined by the prosecution. The learned Addl. Sessions Judge (FTC), Lakhimpur is requested to examine if it would be appropriate to issue directions to the prosecution to produce the remaining witnesses in a time bound manner and to take up the trial of this case by giving short dates and/or to take up the case on day-to-day basis, if the board of the Court so permits. In this regard, the learned counsel for the petitioner is permitted to produce a certified copy of this order before the learned trial Court.

10. The prayer for bail is rejected at this stage.

11. The Registry shall de-tag the records of BA 1528/2022.

JUDGE

Comparing Assistant