

GAHC010063002023



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

Case No. : Bail Appln./1115/2023

JAHIDA BEGUM
W/O LATE HAZARAT ALI
R/O VILL- NO. 1 MALIBARI PATHAR
P.S. BOKO
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR N AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

12.04.2023

Heard Mr. N.J. Dutta, learned counsel for the accused-petitioner and Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam for the State.

2. This bail petition has been filed by the accused-petitioner, namely, Miss

Jahida Begum, seeking bail in connection with Boko P.S. Case No. 36/2023 registered under Sections 120(B)/302 of the IPC. The accused-petitioner was arrested on 30.01.2023 and since then she has been in custody.

3. This Court vide orders dated 24.03.2023 and 06.04.2023, the case diary along with the post mortem report were called for.

4. Today when the matter is called up, the case diary has been furnished along with the post mortem report. However, the post mortem report does not conclusively rendered any opinion regarding the cause of death of the deceased person rather the same is kept pending till receipt of the opinion of FSL report from the Directorate of Forensic Science, Kahilipara in respect of the Chemical/Toxicological Analysis report of the viscera and the blood.

5. The accused-petitioner has been in custody since the date of her arrest. Although investigations have proceeded in the matter but charge-sheet has not been filed. The case diary also reflects that the cause of death in respect of the deceased has been kept pending till the receipt of the Court from FSL regarding Toxicology report in respect of the viscera and blood sample of the deceased.

6. The learned counsel for the accused-petitioner refers to Section 439 and particularly the Assam Amendment incorporated in the Act. The Assam Amendment under Section 439 Cr.P.C. reads as under:

“STATE AMENDMENT

Assam.—In its application to the State of Assam, after Section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), the following shall be added.

439-A. Power to grant bail.-(1) Notwithstanding anything contained in this

Code, no person--

“a) who, being accused or suspected of committing an offence under any of the following Sections, namely, ---Sections 120B, 121, 121A, 122, 123, 124A, 153A, 302, 303, 304, 307, 326, 333, 363, 364, 365, 367, 368, 392, 394, 395, 396, 399, 412, 431, 436, 449 and 450 of the Indian Penal Code, 1860, Sections 3, 4, 5 and 6 of the Indian Explosive Substances Act, 1908, and Sections 25,26, 27, 28, 29, 30 and 31 of the Arms Act, 1959, is arrested or appears or is brought before a court; or

(b) who, having any reason to believe that he may be arrested on an accusation of committing an offence as specified in clause (a), has applied to the High Court or the Court of Sessions for a direction for his release on bail in the event of his arrest, shall be released on bail or as the case may be, directed to be released on bail, except on one or more of the following grounds, namely: -

(i) that the Court including the High Court or the Court of Session for reasons to be recorded in writing is satisfied that there are reasonable grounds for believing that such person is not guilty of any offence specified in clause (a);

(ii) that such person is under the age of sixteen years or a woman or a sick or an infirm person;

(iii) that the court including the High Court or the Court of Sessions for reasons to be recorded in writing is satisfied that there are exceptional and sufficient grounds to release or direct the release of the accused on bail.”

7. Perusal of the Assam Amendment reveals that if the person is under the age of 16 years or a woman or a sick or infirm person, the Court can consider the release of the person on bail. Since the petitioner before this Court is a woman she is entitled to the benefit incorporated in the statute.

8. Accordingly, upon hearing the counsels for the parties and upon perusal of the case diary along with post mortem report as well as the provisions of the Act, this bail petition stands allowed.

9. Therefore, the accused-petitioner, named above, shall be released on bail in connection with the aforementioned case, on furnishing a bail bond of Rs. 20,000/- (Rupees Twenty Thousand) with one local surety of like amount to the satisfaction of the Court of JMFC, Boko, Kamrup, subject, of course, to the following conditions:

(i) That the accused-petitioner shall appear before the JMFC Court as and when required;

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

(iii) That the accused-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 officer; and

(iv) That the accused-petitioner shall not leave the jurisdiction of the concerned Boko P.S without obtaining prior permission from the concerned Court.

11. Accordingly, the bail application stands disposed of.

12. Return the case diary.

JUDGE

Comparing Assistant