

GAHC010063322023



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

Case No. : Bail Appln./1108/2023

JINTU ALI
S/O BORKAT ALI
VILL- MIRGANDA
P.O. HATIPARA
P.S. CHHAYGAON
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S RANA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 20.04.2023

Heard Mr. I. Rahman, learned counsel appears for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam.

2. The bail application is filed by the petitioner, who was arrested in connection with Hatigaon P.S. Case No. 80/2023 under Section 302 of IPC.

3. An FIR dated 24.02.2023 was lodged by the informant one, Chan Miya Bhuyan, wherein it was alleged that on 24.02.2023 at about 4 p.m, he was informed that his daughter, namely, Kamla Begum, aged about 20 years felt dizziness and became unconscious. Subsequently, he was informed by the family members of his son-in-law that his daughter had hung herself. Upon reaching the hospital he noticed that his daughter was put on ventilation and around 9 a.m on the next day morning his daughter was declared dead. It is alleged that the petitioner, Jintu Ali had eloped with his daughter and married her and therefore, it is suspected that Jintu Ali had committed the murder. The said FIR was received and registered as Hatigaon P.S. Case No. 80/2023 under Section 302 of IPC.

4. Pursuant to the investigations carried on by the Investigating Officer, petitioner was taken into custody on 25.02.2023. Since then, he has been in custody.

5. It is submitted by the learned counsel for the petitioner that he is not responsible for the death of his wife. Learned counsel for the petitioner submits that the relationship between the petitioner and his deceased wife was very cordial and there was no occasion for the petitioner to have committed the crime as alleged.

6. The case dairy has been produced by the learned Addl. P.P.
7. The Case Diary produced has been duly perused.
8. It is seen that the Post Mortem Report available in the case dairy reveals that the opinion regarding the cause of death has been kept pending till the receipt of Toxicological analysis Report from the Directorate of Forensic Science and Laboratory, Kahilipara, Guwahati.
9. Perusal of the case dairy does not reveal any animosity between the petitioner and his deceased wife. Witnesses examined also stated that the relationship between the husband and wife was cordial.
10. From the case dairy, it is seen that the marriage between the petitioner and his deceased wife was not accepted by the family members of the deceased wife, including her father namely, the informant. The statements of the landlord recorded reveals that on the date of the incident, upon hearing the petitioner's screaming, she rushed to their potters and found that the deceased was lying on the bed and the petitioner was applying mustered oil on the hands and feet of the deceased.
11. The case dairy does not reveal that the further detention of the petitioner is necessary for continuation of investigation. Rather there is a entry in the case dairy on the basis of the statements made by witness, Marjina Begum, that at the time of the incident, the deceased was alive and the husband was

applying Mustered oil on her hands and legs so that she feels relaxed.

12. The offences alleged to have been committed by the petitioner are grave and the punishment prescribed under Section 302 of IPC is severe. However, considering that the Toxicology report are awaited, and the cause of death could not be ascertained in the Post Mortem Report and also taking the recent State Amendment into consideration, this Court is disinclined to grant bail as prayed for to the petitioner at the stage of investigation. 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."

13. Taking into consideration of all of these above, this Court is disinclined to grant bail at this stage of investigation. Bail petition is accordingly dismissed.

14. Return back the case dairy.

JUDGE