

GAHC010079472023



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

Case No. : Bail Appln./1344/2023

MD. SAMSULLAH KHAN
S/O MD. AMIR KHAN
R/O BOIRAGIMOTH, NIZKADOMONI
MALAKHUBASA, P.S. DIBRUGARH
DIST. DIBRUGARH, ASSAM
PIN CODE-786001

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MD. I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.05.2023

Heard Mr. Md. I. Hussain, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, the learned Addl. P.P. for the State.

2. The petitioner, namely, Md. Samsullah Khan, who was arrested on

07.07.2022 in connection with Dibrugarh P.S. Case no. 390/2022, under sections 306/34 IPC read with added sections 120B/307 IPC has filed this second application for regular bail under section 439 Cr.P.C. The first application was rejected by order dated 09.02.2023, passed in B.A. 3679/2022.

3. As on 04.05.2023, the said case is pending at the stage of framing of charge in connection with Sessions Case No. 349/2022.

4. The scanned copy of the case records was called for in connection with B.A. 3679/2022. The said case record has been called for and tagged with the present case. Moreover, the learned counsel for the petitioner has produced the certified copy of order-sheet dated 23.02.2023 to 24.04.2023 of the Sessions Case No. 349/2022 from the Court of the learned Additional Sessions Judge, Dibrugarh. The learned Addl. P.P. has perused the case record and the order-sheet and has opposed the prayer for bail.

5. On a perusal of the case record, it appears that on being terrorized by the accused persons including the petitioner, the deceased in this case had committed suicide. Therefore, the case records revealed that two attempts were made in close proximity to commit crime for which the previous bail application was rejected.

6. However, the trial appears to be still at a nascent stage as the case is still at the stage of hearing on charges. However, by now the petitioner has been incarcerated for about 314 days in custody.

7. Although there are sufficient materials in the case diary to implicate the petitioner of participating in the offence. However, one of the prime accused, namely, Nishant Sharma has been enlarged on bail by virtue of order dated 07.02.2023, passed by a co-ordinate Bench of this Court in BA 34/2023, long

custodial detention of 314 days would entitle the petitioner of being released on bail.

8. The learned Addl. P.P. has produced a copy of FIR dated 15.07.2022, which was registered as Dibrugarh PS Case No. 418/2022, which contains allegations that the petitioner had threatened the informant of the said case to recover the loan amount and that by threatening her, she was taken to Kolkata and her kidney was sold off for the sake of the recovery of loan amount of Rs.3,50,000/-.

9. Be that as it may. In connection with this case, the petitioner has spent 314 days in custody since he was arrested on 07.07.2022. Moreover, the said case is at the stage of hearing on charges. Therefore, the Court is inclined to release the petitioner on bail on his furnishing a bail bond for a sum of Rs.2,00,000/- (Rupees two lakh only), with 2 (two) solvent surety of like amount to the satisfaction of the learned Addl. District & Sessions Judge, Dibrugarh. Out of the two sureties, one surety should offer his/her immovable property having sufficient value to cover the bail amount as security for grant of bail,

10. Bail is granted on the following conditions:-

I. The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.

II. 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 Court or to any police officer or tamper with the evidence. He shall not, in

any manner, try to overawe or influence or intimidate the prosecution witness.

III. The petitioner shall not obstruct the smooth progress of the investigation/trial.

IV. The petitioner shall not misuse his liberty in any manner.

V. The petitioner shall appear before the I/O within 15 (fifteen) days from the date of his release.

VI. The petitioner shall not leave the jurisdiction of Dibrugarh District without prior permission from the learned Trial Court.

VII. Along with the bail bond, the petitioner shall have to submit an undertaking in form of an affidavit that he shall not make any attempt to meet and/or threaten the informant or any other member of informant's family, or to dissuade them from giving evidence in Court. If such an attempt is brought to the notice of the learned Trial Court, it would be open to the said learned Court to order cancellation of this bail and to cause arrest of the petitioner as a measure to ensure safety of the witnesses.

VIII. In the undertaking in form of an affidavit to be submitted, the petitioner shall also undertake to physically appear before the learned trial Court on all dates fixed. The petitioner would also undertake that if he cannot appear for compelling reasons, he would ensure that he is duly represented by his learned Advocate, duly instructed to appear and cross-examine and/or examine any witness who is examined during his absence and in such an event, he would not dispute his identity or the identity of the witnesses.

IX. If any of the condition for grant of bail is not complied with, it would be open to the learned Trial Court to order cancellation of bail and/or for issuing fresh NBWA against the petitioner to secure his presence in trial.

11. Records of BA 3679/2022 shall be returned.
12. Application is disposed of.

JUDGE

Comparing Assistant