

GAHC010087352023



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

Case No. : Bail Appln./1557/2023

SHAFIKUL ISLAM AND ANR
S/O MD. HAFIZUDDIN
R/O VILL- HABI DUNGA
P.S. BAGHBAR
DIST. BARPETA, ASSAM

2: JANNAUL HOQUE @ JANNATUL HOQUE
S/OMD. JALIUR RAHMAN
VILL- KARAGARI GOAN
P.S. PATACHARKUCHI
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 12.06.2023

Heard Mr. B. Islam, learned counsel for the petitioners and also
heard Mr. K.K. Das, learned Addl. P.P. for the State.

2. In connection with Jagiroad P.S. Case No. 210/2022, under sections 328/307/379/34 IPC, which is now being tried as Sessions Case No. 195/2022, the petitioner no. 1, Shafikul Islam was arrested on 14.05.2022 and has spent 394 days in custody, and the petitioner no. 2, Jannaul Hoque @ Jannatul Hoque was arrested on 17.05.2022 and has spent 391 days in custody, and both the petitioners have prayed for regular bail under section 439 Cr.P.C. The previous application for bail was rejected by order dated 21.09.2022, passed in BA. No. 2401/2022.

3. The learned counsel for the petitioners has submitted that the previous bail application was rejected at the motion stage without calling for the case records. It was submitted that as on 19.01.2023, 2 (two) out of 11 (eleven) prosecution witnesses have been examined and thereafter, the case was listed on 20.01.2023, 14.02.2023, 04.03.2023, 23.03.2023, 26.04.2023, and 20.05.2023, but there has been no progress in the trial and the next date is fixed on 21.06.2023. Hence, it has been submitted that as the petitioners are in custody for about 391 and 394 days respectively, and 9 (nine) prosecution witnesses are yet to be examined, there is no likelihood of 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 them in the event of grant of bail.

4. The learned Addl. PP has opposed the prayer for bail. It has been submitted that the petitioners are also accused in Sessions Case No. 194/2022, wherein the petitioners had murdered a passenger in the Maruti Alto Car by administering poison and the dead man was looted of all his valuables and his dead body was found in a roadside drain, in exactly same manner as the

victim in the present case was drugged, looted and left for dead in the roadside. It was submitted that the petitioners have applied for bail in the said case by filing B.A. No. 2029/2023, which is listed before another Bench of this Court today, i.e. 12.06.2023.

5. In light of the nature of evidence that appears against the petitioners, there appears to be a strong presumption against them. The submissions of the learned APP to the effect that the petitioners are accused of murdering a passenger in their car could not be denied by the learned counsel for the petitioners as the said B.A. No. 2029/2023 is listed as item no. 6 before Court Hall No. 13.

6. The scanned record of the present case reveals that out of several items looted from the victim, the mobile phone of the said victim/informant was found in possession of the petitioner no. 1, which was identified from CDR analysis report. The petitioners were also identified in course of TIP conducted by the I.O.

7. It would 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."

8. 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.

9. If convicted for the commission of offences under Section 328/307 IPC, the petitioners may be sentenced for a period of 10 years and fine. Therefore, the petitioner having not spent half of the period of sentence in custody, in light of the ratio laid down in the case of *Satender Kumar Antil (supra)*, and considering the provisions of Section 436A CrPC, the Court is inclined to refuse bail to the petitioners at this stage, moreso, because the petitioners have allegedly murdered another victim in similar fashion which was adopted to administer drug and loot the informant in this case in Maruti Alto vehicle, which is also the same brand of vehicle used in the herein before referred Sessions Case No. 194/2022.

10. The Court takes note of the submissions made by the learned counsel for the petitioners that out of 11 prosecution witnesses, only 2 (two) witnesses have been examined as on 20.05.2023. Therefore, the learned

Sessions Judge, Morigaon 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 petitioners are permitted to produce a certified copy of this order before the learned trial Court.

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

JUDGE

Comparing Assistant