

GAHC010097502023



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

Case No. : Bail Appln./1628/2023

JAYDAR ALI
S/O LATE HATEM ALI
VILL- MADYA PETLA (KUMARGANJ)
P.S. TAMARHAT, P.O. KUMARGANJ
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 26.05.2023

Heard Ms. R. Choudhury, learned counsel appearing for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam.

2. The bail application has been preferred by the petitioner,

namely, Jaydar Ali seeking bail in connection with Tamarhat P.S. Case No. 44/2023 corresponding to GR Case No. 621/2023 under Section 302/34 of IPC. The petitioner was arrested on 31.03.2023 and since then he has been in custody.

3. It is submitted that an FIR dated 16.03.2023 was lodged by the informant, one Jalal Uddin Sheikh, wherein it was alleged that the deceased, Saheb Ali had illicit relationship with the accused No.1, named in the FIR. It is alleged that on 15.03.2023 at about 10.00 p.m, the accused No.1 along with the other accused persons premeditatedly called the deceased to her house and they killed him by assaulting him with dao and thereafter threw his dead body in the nearby Baonai river. It is alleged that the accused persons named in the FIR stated before one Anuwar Hussain, who is the Member of No.14 Kumarganj ZPC showing him the clothes of the deceased, that since the deceased was found in an objectionable condition in the house of the accused no.1, he took off his clothes and jumped into the river. Next morning at about 5.30 a.m, the dead body of the deceased was found floating in the Baonai River near the house of the accused No.1. Thereafter, the police was informed and Post Mortem etc was conducted.

4. The learned counsel for the petitioner submits that the petitioner is the brother-in-law of the accused No.1 and they live in nearby houses. On the night of the incident, because of a commotion, which arose in the house of the accused No.1, the petitioner along with his wife had gone to enquire. They

came to be informed that the deceased and the accused No.1 were found in an objectionable condition and thereafter the deceased had taken off his clothes and jumped into the river.

5. Learned counsel for the petitioner submits that the petitioner is no way connected with the offences alleged. He only went to the place of incident to enquire about the incident upon hearing a commotion in the house of the accused No.1.

6. This Court by earlier order dated 11.05.2023, had called for the case diary. And Mr. B. B. Gogoi, learned Addl. P.P has produced the case diary before this Court as called for.

7. Case diary produced has been carefully perused. The statement of the accused No.1 made under Section 164 Cr.P.C is available in the case diary and the same has been carefully perused. The Post Mortem Report available in the case diary reveals that the medical opinion of the cause of death was – *“due to shock and hemorrhage as a result of injuries sustained over the body as described. The injuries described were caused by heavy sharp cutting weapon which was homicidal in nature. Approximate time since death is 12 to 24 hours.”*

8. Perusal of the case diary reveals that there was some injuries inflicted on the deceased. The case diary also reveals that the investigation has progressed to a considerable extent. The statements of the various witnesses recorded have been carefully perused. Upon due perusal of the case diary, it is seen that there are no incriminating materials, in so far as the petitioner is concerned, which implicates the accused No.1 or

any other accused in their statements made both under Section 164 Cr.P.C as well as under Section 161 Cr.P.C. No weapons etc. have been recovered or seized from the possession of the petitioner.

9. Accordingly, upon giving my anxious thoughts to the submissions made and the materials available in the case diary, this Court is of the view that considering the period of detention undergone and also considering that there are no materials at this stage of investigation, which incriminates the petitioner the prayer for bail made by the petitioner can be allowed.

10. Accordingly, petitioner is directed to be released on bail forthwith subject to executing a bail bond of Rs.30,000/- (Rupees thirty thousand) only with one local surety of like amount to the satisfaction of the Chief Judicial Magistrate, Dhubri. The bail, granted however, subject to the following conditions:-

- i) The petitioner shall continue to appear before the police and cooperate with the Investigating Officer as and when required, till completion of investigation.
- ii) The petitioner shall not change his residence or place of business, without prior written permission from the Court of Chief Judicial Magistrate, Dhubri.
- iii) That the petitioner shall not hamper or

tamper with the investigation in any manner; and

iv) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person/witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer in connection to this Police Station Case.

11. If any of the conditions are found to be violated by the petitioner then the Investigating Officer shall be at liberty to seek cancellation of the bail granted to the accused.

12. With the above direction, the bail petition is accordingly allowed and disposed of.

13. Return the Case Dairy.

JUDGE

Comparing Assistant