

GAHC010097512023



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

Case No. : AB/1652/2023

MARJINA BIBI
W/O JAYDAR ALI
VILL- MADYA PETLA (KUMARGANJ)
P.S. TAMARHAT,
P.O. KUMARGANJ
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, GOVT. OF 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. This Anticipatory bail petition has been filed by the petitioner, namely, Marjina Bibi, apprehending arrest in connection with Tamarhat P.S. Case No. 44/2023 corresponding to GR Case No. 621/2023 under Section 302/34 of IPC.

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 accused No.1, named in the FIR had illicit relationship with her brother, the deceased, Saheb Ali. 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 her husband, Jaydar Ali, who is the brother-in-law of the accused No.1 was arrested in connection with the said Police Station case and has been in judicial custody in connection with this

case. As such she has serious apprehension that she will also be arrested although she is not at all connected with the allegations made in the FIR. Learned counsel for the petitioner also submits that on the night of the incident because of the commotion, which came from the house of the accused No.1, named in the FIR, the petitioner and her husband along with other relatives had gone to enquire from the accused person No.1 as to the reason for the said commotion. The petitioner, her husband and the accused persons named in the FIR all stay in the nearby village. Upon many enquires, the petitioner came to be informed that the deceased was found in an objectionable position with the accused No.1 and thereafter when the other relatives came to be aware, he ran away and jumped into the river. Learned counsel for the petitioner submits that the petitioner is not at all connected with the offences alleged and therefore, it is merely on the basis of suspicion that she may be arrested and therefore the application praying for anticipatory bail has been filed.

5. This Court by order dated 11.05.2023 had called for the case diary. The case diary is produced by Mr. B.B. Gogoi, learned Addl. P.P for the State of Assam as called for.

6. Learned counsels for the parties have been heard. The case diary produced has been carefully perused.

7. Statements of the accused No.1 made under Section 164 Cr.P.C has also been perused along with the statements of other witnesses available in the case diary.

8. Post Mortem Report reveals that the cause of death is due to shock and haemorrhage as a result of the injuries sustained by the deceased over the body which were caused by the heavy sharp cutting weapon and which were homicidal in nature.

9. Upon careful perusal of the case dairy it reveals that there are no incriminating materials available against the petitioner at this stage of investigation. The statements made under Section 164 Cr.P.C by the accused person No.1 and other witness does not implicate the petitioner at this stage of investigation.

10. Accordingly, this Court is of the view that the prayer for anticipatory bail by the petitioner can be granted. Accordingly, in the event of arrest of the petitioner 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 is released on a bail bond of Rs.25,000/- (Rupees twenty five thousand) only with one (1) local surety of like amount to the satisfaction of the Arresting Authority. The bail granted however, is subjected to the following conditions:-

1. That the petitioner shall appear before the Investigating Officer within 10(ten) days and co-operate in the investigation as and when required;
2. The petitioner shall not leave the territorial jurisdiction of the police station, without prior written permission from Officer-in-Charge,

Tamarhat Police Station.

3. That the petitioner shall not hamper or tamper with the investigation in any manner; and

4. 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 petitioner.

12. Anticipatory bail petition is accordingly disposed of.

13. Return the Case Diary.

JUDGE

Comparing Assistant