

GAHC010108372023



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

Case No. : Bail Appln./1796/2023

ACHAJAT ALI @ AFAZED ALI @ AZAD ALI
S/O MUCHALIM ALI @ MUSLIM ALI, R/O VILL-NO. CHUTIA KARE, P.S.-
NORTH LAKHIMPUR, DIST-LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24.07.2023

Heard Mr. B. Choudhury, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.

This bail application has been preferred under Section 439 of Code of Criminal Procedure, 1973, praying for bail of petitioner, namely, Achajat Ali @ Afazed Ali @ Azad Ali who has been detained behind the bar since 19.05.2022

(since last 431 days) in connection with Sessions Case No. 89 (NL)/2022 which is pending before the learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur.

The facts relevant for consideration for instant bail application, in brief, are that one Wazid Ali, on 16.05.2022 lodged an FIR before the Officer-in-charge of North Lakhimpur Police Station, *inter-alia*, alleging that on 15.05.2022 at about 9.00 pm when his son Ishad Ali went to the house of his neighbor Ayub Ali to attend the marriage ceremony while returning back he was stabbed by the present petitioner with a sharp weapon and as a result of which the son of the informant expired in the hospital.

On receipt of the said FIR, North Lakhimpur P. S. Case No. 246/2022 was registered under Section 302 of the IPC and investigation was initiated. Ultimately on completion of the investigation charge-sheet was laid against the present petitioner under section 302 of the Indian Penal Code.

Learned counsel for the petitioner submitted that the present petitioner is detained behind the bar since 19.05.2022 and already four prosecution witnesses including the first informant has been examined by the learned trial court. He also submits that unless the present petitioner is enlarged on bail he may not be able to prepare his defense properly and in support of his contention learned counsel for the petitioner for the has cited a ruling of Hon'ble Supreme Court of India in ***Nikesh Tarachand Shah Vs Union of India*** reported in **(2018) 11 SCC 1**, wherein Hon'ble Supreme Court observed that the accused person who enjoys freedom in much better position to look-after his case and to properly defend himself, than if he were in custody and that presumably innocent person must have freedom to enable to establish his innocent.

On the other hand, learned Additional Public Prosecutor opposed the grant of bail at this stage pointing out that though the first informant has been already examined as prosecution witness No. 1, however one vital witness is yet to be examined and has placed the scanned copy of the LCR which was requisitioned in connection with this case.

I have perused the materials placed before me as well as considered the submissions made by the learned counsel for both sides.

On perusal of the case record, it appears that the charge against the present petitioner was framed under section 302 of the Indian Penal Code way back on 13.09.2022 and since then out of 15 enlisted prosecution witnesses only four have been examined.

The slow pace in which the trial is progressing is a matter of concern and same requires to be expatiated. However, it also appears that though the first informant has already examined, one another vital witness namely, Smti Janmani Begum, before whom the present petitioner is stated to have made extra judicial confession, is yet to be examined and considering the gravity of the allegations levelled against the present petitioner as well as considering the fact that one of the vital witness namely Smti Janmani Begum is yet to be examined, this Court is of the consideration that to obviate any scope of influencing of witness Janmani Begum by the present petitioner, his prayer for bail may only be considered after examination of said witness by learned Trial Court, Hence, the prayer for bail of the prayer of the present petitioner is rejected at stage.

However, it is hereby made clear after examination of Smti Janmani Begum by the learned Trial Court that the petitioner shall be free to prefer an application for bail before the learned trial court.

With the above observations, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant