

GAHC010111912023



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

Case No. : Bail Appln./1847/2023

RAKIBUL ISLAM
S/O SUKUR ALI
R/O VILL-MAJORGAON, P.S. BARPETA,
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

09.06.2023

Heard Mr. K. Sarma, learned counsel for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioner, namely

Rakibul Islam has prayed for grant of bail in connection with **Session Case No. 209/2022** arising out of **Barpeta P.S. Case No. 338/2022** under Sections **341/302/34** of the IPC pending in the Court of learned Sessions Judge, Barpeta.

The scanned copy of case record along with the case diary, as called for, is placed before the Court.

Mr. K. Sarma, learned counsel for the accused petitioner, submits that the accused petitioner has been languishing in judicial custody for nearly 1 ½ years despite his co-accused persons including the prime one are already released on bail. Mr. Sarma further submits that out of 32 (thirty two) listed prosecution witnesses of the charge-sheet, the learned trial Court has examined 08(eight) witnesses and none of them has implicated the present accused with the alleged offence and as such, further continuation of detention of the accused petitioner for the purpose of the remaining part of trial of the case may not be necessary.

Opposing the bail application Mr. B. Sarma, learned Addl. Public Prosecutor, submits that the evidence collected by the investigating officer show that the present accused was one of the prime conspirators of the crime. Therefore, Mr. Sarma submits that grant of liberty of bail at the present stage of the case may adversely affect the remaining part of trial.

In the FIR it was alleged that there was some land dispute between the sister of the informant and the accused persons mentioned in the FIR, which is still pending before the Court. During the pendency of the land dispute, on 21.03.2022 at about 7.30 p.m at Bilartari Chowk in the Barpeta District, the sister of the informant while coming out from the house of one Dr. Binay after

checkup was killed by the accused persons No.1 and 2 named in the FIR. It is alleged that both the accused persons stabbed on her stomach and killed her. Thereafter, the accused persons No.1 and 2 had fled away from the place of occurrence on the Motor cycle ridden by the accused No.3. Another sister of the informant, namely, Rupjan Nessa recognized the accused persons and is a witness of the incident.

It is noticed that the accused petitioner has been in judicial custody since 31.03.2022, that is, for 436 days.

A perusal of the case record reveals that charges under Sections 302/34 of the IPC are framed against the accused petitioner and 6(six) others vide order, dated 07.01.2023. Thereafter, the learned trial Court has examined 7(seven) prosecution witnesses out of 32(thirty two) witnesses.

The evidence of the prosecution witnesses so far recorded, it is revealed that the alleged occurrence had occurred due to land dispute in respect of which civil suit is pending between the parties giving rise to a mutual fight and in the midst of it one Rinima Begum died due to sustaining injuries caused by one co-accused. The post-mortem report shows that the cause of death of Rinima was due to haemorrhage and shock resulting from the injuries, caused by sharp cutting pointed weapon.

Some co-accused persons are already released on bail.

On scrutiny of the case diary, it is seen that prima facie the accused petitioner abetted the commission of the offence, subject, however, to final outcome in trial of the case.

Having heard the learned counsel for both sides and perusal of the case record along with the case diary, this Court is of the opinion that further

continuation of detention of the accused petitioner for the purpose of remaining part of trial of the case may not be required.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.50,000/- (Rupees Fifty Thousand)** only with one surety of like amount to the satisfaction of the learned **Sessions Judge, Barpeta** subject to the following conditions-

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of; and
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witness who are acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant