

GAHC010136032023



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

Case No. : Bail Appln./2182/2023

J S PARIJAT @ J. S. PARIJAT SAIKIA
S/O SRI JAY CHAND SAIKIA
PERMANENT R/O VILL- HAZARIMAL, P.S. SOOTEA, DIST. BISWANATH,
ASSAM
TEMPORARY R/O GOLDEN TOWER,
FLAT NO. 203, BAGORBORI
PANJABARI ROAD,
P.S. SATHGAON, DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

23-06-2023

Heard Mr. B. D. Konwar, learned Senior Counsel assisted by Ms. P. Gupta, learned counsel for the petitioner and Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam for the

State.

2) **Mr. J. S. Parijat @ J.S. Parijat Saikia** have filed this application under Section 439 CrPC seeking bail in **Dispur Police Station Case No. 1034/2023** registered under Sections 279/338/304/109 of the IPC corresponding to G.R. No. 4053/2023, wherein, he is in custody since 10.06.2023.

3) Brief facts of the case is that on 08.06.2023, around 09:50 am the complainant along with other local people arrived at Dispur Police Station and lodged an FIR stating that on the said day around 07:20 am near Ganesh Mandir at Ganeshguri, Guwahati a School Bus of Royal Global School bearing Registration No. AS-01-PC-7011 (School Bus No.15 of the said School) was driven rashly and in negligent manner and it hit a student named Priya Kumari in which the said student succumbed to her injuries at the spot itself and that the said incident occurred due to the digging on the road side for installation of underground water pipes.

4) With regard to the said incident Dispur Police Station also received another FIR from an Assistant Engineer of Guwahati Metropolitan Drinking, Water and Sewerage Board against M/s. Millennium Fabrication and A. K. Construction represented by one of the arrestee, B. Balaji along with his other co-accused including the petitioner and others, as those accused persons dug a pit at the place of occurrence of the case in connection with ongoing works of JICA assisted Guwahati Water Supply Project of Guwahati Jal Board that was done without any procedure and barricading and fencing the said pit and kept the same open, for which the incident involved in the case, occurred.

5) Petitioner stated that he is a registered Class-II Contractor under the Public Works Department, Government of Assam and is also the sole proprietor of the firm M/s. Maa Kamakhya Traders, Guwahati. Petitioner also stated that in the contract agreement dated 23.09.2022 executed between the Project Director, Project Implementation Unit, JICA assisted Guwahati Water Supply Project (employer) and M/s Millennium Fabrication and Engineering Works and A. K. Construction (Joint Venture) (Contractor) relating to the supply, installation and commissioning of MS & HDPE Pipe and installation and commissioning of employer furnished D.I. Pipes and allied works for the balance works under the distribution network in DMAS NS-1, NS-2, NS-3, NS-7, NS-8, NS-15 to NS-21 of Narakasur area of South-Central Zone Guwahati, he was one of the fourth signatories as witnesses.

6) Mr. Konwar, learned Senior Counsel placed the photostat copy of the said contract agreement dated 23.09.2022 before the Court to show that petitioner was one of the witnesses amongst the four witnesses of the said agreement. Mr. Konwar, learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court passed in the case of *Naresh Giry Vs. State of M.P.*, reported in *(2008) 1 SCC 791*.

7) It is also submitted on behalf of the Petitioner that though he was employed as a sub-contractor for certain Sectors of the said Project but no accidents and/or mishaps occurred within his contract work area and that the area where the incident occurred near Rajdhani Masjid, Dispur he was not given the responsibility of overseeing the said construction site by the Principal contractor. Petitioner stated that for the said area in which the said mishap / tragic accident took place in the morning on 08.06.2023 one M/s. Hitech Project was entrusted with the work including the site and that the owner of said M/s. Hitech Project has absconded and evading arrest.

8) It is placed before the Court that the driver of the School Bus arrested in the case had already been released on bail on 09.06.2023.

9) Mr. Goswami learned Additional Public Prosecutor submitted that the concerned pit was without any barricade and it was kept open, though as per the agreement signed between the parties safety procedures like – "to provide fencing, lighting, guarding and watching of the works till completion and to keep the site and works clear of unnecessary obstruction so as to avoid danger" were required to be complied with. Mr. Goswami stated that the I.O. of the case in its notes specified that the contractor M/s. Millennium Fabrication and Engineering Works did not comply with such provisions.

10) Perused the case diary placed before the Court today by Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam and the notes of the concerned Investigating Officer relating to the case.

11) From the case diary, the evidences so far recorded by the concerned I.O. and the notes of the said Officer therein, it is seen that the Scooty bearing Registration No. AS-01-AN-6710 (Honda Activa) with two female riders were proceeding towards the Rajdhani Masjid from backside of MLA Hostel on the road on its left side by the side of the footpath and on its right side the School Bus of Royal Global School bearing Registration No. AS-01-PC-7011 was also moving in

parallel with the said Scooty towards the Rajdhani Masjid. In between the portion of the said road from the backside of the MLA Hostel towards the Rajdhani Masjid, a huge pit with large heap of excavated/dug soil was on the road that is extended up to the middle of the road from the footpath to the divider and that the said pit was dug for the purpose of lying down underground water pipes, which was kept open without any fencing and barricading. As per the case diary, in the said portion of the road due to the said pit, only one vehicle could pass by and that the driver of the said School Bus drove it in a high speed so as to cross the said pit area early and the said Scooty, which was on the left side of the said school bus, bump into the said heap of excavated/dug soil kept on the road itself adjacent to the said pit and both the riders of the Scooty fell down on the road.

12) As per the notes of the I.O. in the case diary it is seen that the pillion rider of the said Scooty, i.e., the deceased fell down on her right side, who was without helmet and the left rear wheels of the said School Bus ran over the said pillion rider of the Scooty in which she sustained grievous injuries and the said Bus fled away from the scene. The I.O. of the case in its notes specified that the said pit was without any barricade and fencing and that the pit was kept open.

13) The I.O. of the case also specified that the accused persons, the contractors had dug those pits for laying down underground water pipelines but they did not follow any safety measures pertaining to such pits dug for the said purpose and kept those pits open without any barricade and fencing having knowledge that those pits if kept open without barricade and fencing likely to cause death though without intention to cause death. In the notes of the I.O. it is seen that though the accused persons had no intention to cause death but their works showed that they knew such type of fatal and tragic incident/accident likely to occur.

14) Post mortem report of the deceased dated 08.06.2023 as available in the case diary reveals that her death was due to Crush Injuries of Head caused during life by blunt force impact and are consistent with vehicular incident.

15) On perusal of the materials in the case diary and considering the period of detention in custody since 10.06.2023, the Court is of the view that further custodial detention of the petitioner, named above, is not warranted to investigate the said **Dispur Police Station Case No. 1034/2023** and as a result, this bail application of the petitioner is accepted.

16) Accordingly, the petitioner, namely, **Mr. J. S. Parijat @ J.S. Parijat Saikia**, be released

on bail in said **Dispur Police Station Case No. 1034/2023**, on furnishing a bail bond of Rs.1,00,000/-, with 2 (two) local sureties of the like amount each, one of which shall be a Government employee (either Central or State Government), to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati on conditions that the petitioner shall – **(i)** appear before the Investigating Officer of said Dispur Police Station Case No. 1034/2023, as and when he is required for necessary investigation of the case; **(ii)** not leave the territorial jurisdiction of the Dispur Police Station, without obtaining prior written permission from the concerned Investigating Officer of the case; **(iii)** not hamper with the investigation, or tamper with the evidence of the case, **(iv)** not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer; failing which, the bail granted to him in said Dispur Police Station Case No. 1034/2023 shall stand automatically vacated.

17) Return the case diary herewith.

18) This bail application stands allowed to the extent above.

JUDGE

Comparing Assistant