

GAHC010137732023



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

Case No. : Bail Appln./2245/2023

SONAI DAS @ SONAI KUNDAL
S/O NIRANJAN KHUDAL
VILL- ALISINGA
ROBORTOLA
P.S. DHEKIAJULI
DIST. SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 27-07-2023

Heard Mr. J. Payeng, learned counsel for the petitioner.
Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.

By this application under section 439 Cr.P.C., the petitioner namely, Sonai Das @ Sonai, is praying for bail in connection with Dhekiajuli P.S. Case No. 85/2023, under section 120(B)/302/34 of IPC as the petitioner is behind bar since 24.05.2023 (64 days).

The accusation in this case is that on 19.05.2023, the informant lodged an FIR before the Officer-in-Charge of Dhekiajuli Police Station inter-alia alleging that on the day of occurrence i.e on 19.05.2023, at about 2.15 pm, one Niranjan Kundal, who is the father of the present petitioner assaulted the husband of the first informant with a Machete as a result of which, the husband of the first informant succumbed to his injury. It is also submitted that after committing the offence the accused, Niranjan Kundal surrendered before the Dhekiajuli PS along with weapon which was used for commission of the offence. It is also alleged in the FIR that the first informant suspects' that there was criminal conspiracy with main accused with other persons named in the FIR including the present petitioner. It appears that all the sons of the prime accused were named in the FIR as conspirators. Learned counsel for the petitioner has submitted that the petitioner not committed the offence as alleged in the FIR though he was present at the Revenue Circle Office, Dhekiajuli when the offence was committed. It is further submitted that on perusal of the FIR, it is also apparent that the present petitioner has been named along with his brother in the FIR only on the basis of suspension. The learned counsel for the petitioner also pointed out that vide an order dated 14.06.2023, the learned Sessions Judge, Sonitpur in Criminal Appeal Application No. 298/2023 rejected the bail prayer of the present petitioner on the ground that the custodial detention of the present petitioner is necessary for the purpose of investigation as the I.O has submitted objection that if the arrested accused person is enlarged on bail, it may cause

law and order situation. The learned counsel for the petitioner submitted that the petitioner is a local resident of village- Alisinga Roborta, Dhekiajuli and shall co-operate with the investigation if he grant bail.

On the other hand, the learned Additional Public Prosecutor representing the State has vehemently opposed the bail prayer of the present petitioner as he could not peruse the case diary and the same has not been sent inspite of repeated requisition on two consecutive dates i.e 26.06.2023 and 19.07.2023. Therefore, the learned Additional Public Prosecutor prayed for one last chance to produce the case diary.

I have considered the submission made by the learned counsel for both sides and also the materials available with the application including the bail rejection order of the present petitioner passed by the learned Sessions Judge, Sonitpur.

On bare perusal of the FIR which is annexed along with this bail application, it appears that husband of the informant was killed by one Niranjan Kundal, who is the father of the present petitioner and all the brothers of the present petitioner are also named in the FIR as conspirators only on the basis of suspicion. It also appears that there is no positive assertion in the bail rejection order by the leaned Sessions Judge, Sonitpur as to whether any incriminating materials is found in the case diary or not. More so, the case diary has also not arrived inspite of repeated requisition by the learned Additional Public Prosecutor to the concerned Investigating Officer and the Investigating Officer also failed show any reason for not sending the case diary.

Considering the length of detention already under gone by the present petitioner i.e 64 days and the facts and circumstances as transpires from the materials available on record, this Court is of the considered opinion that the further custodial detention of the present petitioner is not necessary for fair

completion of investigation of the Dhekiajuli P.S. Case No. 85/2023.

In view of above foregoing discussions, the petitioner namely, Sonai Das @ Sonai is enlarged on bail on furnishing a bail bond of Rs.30,000/- (Rupees Thirty Thousand) with one suitable surety of like amount, to the satisfaction of the learned Chief Judicial Magistrate, Sonitpur in connection with Dhekiajuli P.S. Case No. 85/2023, under section 120(B)/302/34 of IPC on the following condition:

(i) That the petitioner shall not directly or indirectly make any threat or promise or induce any persons so as to dissuade him or her from disclosing any facts before the learned trial Court failing which bail order will be cancelled;

(ii) that the petitioner shall co-operate with the investigation as and when called for.

With the observations made above, the bail application stands disposed of.

JUDGE

Comparing Assistant