

GAHC010282582023



undefined

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

Case No. : I.A.(CrI.)/1226/2023

ABHIJIT NANDI
S/O- MANINDRA NANDI, R/O- HOAJI, WARD NO. 8, GOLAGHAT BASTHI, P.O
AND P.S. HOJAI, DIST. HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:SURAJ SEN @ CHOTU

S/O- LATE SITA RAM SEN @ SITARAM SEN
R/O- VILL.- KRISHNA NAGAR
WARD NO. 12
P.S. HOJAI
DIST. HOJAI
ASSA

Advocate for the Petitioner : F K R AHMED, MRS. H THAKURIA

Advocate for the Respondent : PP, ASSAM,

Linked Case : Bail Appln./4616/2023

ABHIJIT NANDI
S/O MANINDRA NANDI
R/O HOJAI
WARD NO. 8

GOLAGHAT BASTHI

P.O. AND P.S. HOJAI
DIST. HOJAI
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP
ASSAM

2:SURAJ SEN @ CHOTU
S/O LATE SITARAM SEN
R/O VILL- KRISHNAA NAGAR

WARD NO. 12
P.S. AND DIST. HOJAI
ASSAM

Advocate for : F K R AHMED
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

Linked Case : Bail Appln./2622/2023

SURAJ SEN @ CHOTU
S/O- LATE SITA RAM SEN @ SITARAM SEN
R/O- VILL.- KRISHNA NAGAR
WARD NO. 12
P.S. HOJAI
DIST. HOJAI
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR. A K SHARMA
Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

20.02.2025

1. This interlocutory application is filed by the applicant Abhijit Nandi seeking cancellation of bail granted to the accused/respondent No. 2 Suraj Sen @ Chotu vide order dated 01.12.2023 passed by this Court in connection with Bail Application No. 2648/2023 which is registered as PRC No. 1118/2021 arising out of Hojai Police Station Case No. 888/2019 under Section 120(B)/302 of Indian Penal Code, 1860. It is submitted that the bail order was procured by the accused/respondent No. 2 by suppressing material facts and by misleading this Court.
2. Heard learned Additional Public Prosecutor, Assam Mr. B. Sarma for the respondent State and learned counsel Mr. S. Chakraborty for the respondent No. 2.
3. It is submitted that the petitioner is the informant and the deceased was the younger brother of the informant i.e. the petitioner. Opposite Party No. 2/Suraj Sen @ Chotu earlier approached this Court seeking regular bail but this Court vide order dated 25.01.2022 in connection with Bail Application No. 3659/2021 and vide order dated 23.01.2023 in connection with Bail Application No. 3409/2022 rejected the bail applications by observing that investigation carried out so far implicates that the petitioner shot the victim with an

unlicensed pistol at point blank range. The cause of death was shock as a result of head injury. Subsequently, the petitioner approached this Court for the third time by filing Bail Application No. 2622/2023.

4. While this petition was pending and when the matter was listed for hearing on 29.11.2023, the respondent No. 2 fraudulently and in a subterfuged manner filed Bail Application No. 2648/2023 with prayer for bail. Bail Application No. 2648/2023 was filed by suppressing material facts that earlier two bail applications have been rejected by this Court and a third bail application being Bail Application No. 2648/2023 was filed. The petitioner has also violated the order of this Court wherein it has been notified that once a bail application is rejected by a Court, a subsequent bail application has to be filed before the same Court (same Bench).

5. The opposite party No. 2 filed the Bail Application No. 2648/2023 before a different Bench by suppressing material facts and procured a bail order dated 01.12.2023 in connection with Bail Application No. 2648/2023.

6. It is pertinent to mention that in the prayer portion of Bail Application No. 2648/2023, it has been mentioned as Bail Application No. 2622/2023 and in the cause title also, Bail Application No. 2648/2023 has been mentioned as Bail Application No. 2622/2023. In the prayer portion the petitioner has however prayed to cancel the bail granted to the petitioner in connection with Bail Application No. 2622/2023 vide order dated 01.12.2023, which is thus not plausible.

7. Learned counsel for the respondent has appeared and submitted that the

applicant in Bail application No. 2622/2023 was Pooja Sen i.e., the accused/respondent No. 2's sister in law, whereas the applicant applying for bail on behalf of respondent No. 2/accused Suraj Sen @Chotu was the respondent's mother Geeta Devi Sen.

8. It is submitted that the respondent No. 2 will be highly prejudiced if his bail is cancelled and if he is forwarded to custody. It is not the respondent No. 2's fault that two bail applications have been simultaneously filed in this Court. The respondent No. 2 was not at all aware that two bail applications were filed on his behalf. Rather the petitioner's mother Geeta Devi Sen and his sister in law Pooja Sen was not at all aware that another bail application was filed on behalf of respondent No. 2. It is further submitted that the respondent who is represented in this Court is also appearing before the Trial Court and he has pledged to co-operate with the trial. The earlier bail applications referred to by the petitioner were filed on behalf of the respondent No. 2, at the stage of investigation and the present bail applications being B.A. 2622/2023 and B.A. 2648/2023 have been filed after charge-sheet was laid against the respondent No. 2. The merits of this case cannot be a ground to cancel the bail application when bail has being granted to the respondent No. 2 after duly considering the submission on behalf of the respondent at the stage of trial. The respondent has not acted with malafide.

9. I have considered the submissions at the Bar with circumspection and I have also taken into consideration the submission that two different applications were filed by two different persons on behalf of the respondent No. 2. Bail has already been granted to the petitioner in connection with B.A. 2648/2023 and this case being B.A 2622/2023, is still pending for consideration of bail. All the

bail applications are placed before this Court as the bail applications are related to the same case arising out of the same FIR i.e., PRC Case No. 1118/2021 arising out of Hojai P.S. Case No. 888/2019 under Sections 120(B)/302 of the IPC.

10. It is apt to reiterate that while this bail application was pending before a Co-ordinate bench of this Court, the respondent No. 2 was granted bail in connection with B.A. 2648/2023, which is the application relating to bail arising out of the same cause of action.

11. The argument of the learned counsel for the petitioner/applicant that the accused/respondent No. 2 has violated the notified order of this Court, wherein it was directed that bail applications arising out of the same matter should be placed before the same Bench, cannot be a ground to cancel the bail granted to the petitioner vide B.A. No. 2648/2023. The petitioner was granted bail in B.A. 2648/2023 on 01.12.2023, whereas the notification was circulated on 30.05.2024 being Notification No. 12.

12. It was brought to the notice of the Co-ordinate Bench of this Court by the learned counsel for the petitioner that the bail order dated 01.12.2023, was fraudulently procured by the respondent No. 2. As bail was already granted, the other bail application No. 2622/2023 was closed vide order dated 20.12.2023. It is further submitted by the learned counsel for the petitioner that the learned counsel appearing on behalf of the respondent No. 2/accused was not aware of B.A. 2622/2023. It appears from the address given in both the affidavits supporting the petitions of B.A. 2622/2023 and B.A. 2648/2023 is similar. Both the applicants Geeta Devi and Suraj Sen @Chotu reside at Hojai under Ward No.

12. It cannot be assumed that the applicants who had sworn in the affidavits were not aware of both the bail applications moved in this Court. However, it cannot be conclusively held that the respondent No. 2/accused was involved in fraudulently procuring the order for bail.

13. At this stage, I have also considered the submission that the respondent No. 2 has been represented by his counsel who has assured that the respondent No. 2 will co-operate with the trial and will not evade appearance.

14. Considering all aspects, this Court is hesitant to cancel the bail granted to respondent No. 2/accused Suraj Sen @Chotu. The respondent No. 2 is directed to abide by the terms and conditions imposed upon him vide order dated 01.12.2023 in B.A. No. 2648/2023. It is apt to mention that the learned Trial Court was given liberty vide order dated 01.12.2023 to impose certain terms and conditions which the learned Trial Court deems fit and proper to secure the attendance of respondent No. 2 during the trial and if any terms and conditions have been imposed, the respondent No. 2 is directed to abide by the terms and conditions thus imposed by the learned Trial Court.

15. Application is hereby dismissed.

JUDGE

Comparing Assistant