

GAHC010156812023



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

Case No. : AB/2524/2023

BIDHU BHUSAN NATH
S/O BINOD NATH
VILL AND P.O. LALPANI
P.S. KATLICHERRA
DIST. HAILAKANDI, ASSAM
PIN-788161

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H I CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

23.08.2023.

Heard Mr. A.S. Tapadar, learned counsel for the applicant and also heard Mr. P.S. Lahkar, learned Addl. Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with **Katlichera P.S. Case**

No.109/2023, under section **120(B)/342/325/307 IPC**, subsequently, added section **302 IPC** this application, under Section 438 of Cr.P.C., is preferred by applicant **Sri Bidhu Bhusan Nath** for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Rusna Begum Talukdar on 12.06.2023.

4. The essence of allegation made in the said FIR is that on 21.06.2023, one Belwar @ Jakir Hussain Chaudhury called her husband Saidur Rahman Talukdar over phone to load betel nut at Manipur and accordingly, her husband went out from home at midnight for loading betel nut along with Anowar Hussain Talukdar and Sabul Ahmed. But, on the next day morning, the complainant came to know that her husband was brutally assaulted and left on roadside fastening his hand and feet.

5. Mr. A.S. Tapadar, learned counsel for the applicant submits that the applicant is innocent and no way involved in the offence alleged in the FIR. Mr. Tapadar further submits that the applicant was granted the privilege of interim pre-arrest bail and pursuant to the said order, the applicant had appeared before the court and his statement is recorded and the co-operation is being extended by him with the investigating agency and his custodial interrogation is not required and therefore, Mr. Tapadar contended to make the interim order absolute in the same terms and condition.

6. Per contra, Mr. P.S. Lahkar, the learned Addl. P.P. has vehemently opposed the petition. Producing the Case Diary before this court Mr. Lahkar submits that the I.O. has collected sufficient materials to show complicity of the applicant with the offences alleged in the FIR and that the husband of the complainant succumbed to the injuries at Silchar Medical College Hospital (SMCH) during the

course of treatment and that subsequently section 302 is added and investigation is going on and if the interim bail is made absolute then it will hamper the investigation. Referring to a decision of Hon'ble Supreme Court in the **State represented by CBI vs. Anil Sharma** reported in **(1997) 7 SCC 187**, Mr. Lahkar submits that custodial interrogation of the applicant is very much necessary in the interest of investigation and therefore, it is contended to dismiss this petition.

7. It is to be noted here that in the case of **Anil Sharma [Supra]**, Hon'ble Supreme Court has held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under [Section 438](#) of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

8. Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Lahkar, learned Addl. PP.

9. It is to be mentioned here that in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others***, reported in ***(2011) 1 SCC 694***, specially to para 112, Hon'ble Supreme Court had laid the parameters to be taken into consideration by the Court, while granting anticipatory bail, which are as follows:

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

10. It appears from the case diary that the I/O has collected sufficient incriminating materials in support of the allegation made in the FIR. The husband of the complainant died subsequently in the SMCH, during the course of treatment on 28.06.2023 and on the prayer made by the I.O. the learned court below had added section 302 IPC, and investigation is going on. Co-accused are yet to be arrested and the investigation is in nascent stage. And if the interim order is made absolute then it would hamper the investigation and consequently, it would be difficult to apprehend the co-accused. It also appears that the investigating officer had categorically mentioned the same in the bail objection prayer which is available in the case diary.

11. Having considered aforementioned facts and circumstances, and also having considered the nature and gravity of the offence, and the punishment prescribed for the same, as well as the submission of learned Advocates for both the sides, and also in view of the observation, so made in the case of ***Siddharam Satlingappa Mhetre*** (supra) as discussed herein above, and also

considering the ratio laid down in the case of **Anil Sharma** (supra) this Court left unimpressed by the submission of Mr. Tapadar, learned counsel for the applicant, that custodial detention of the applicant is not warranted in this case. His custodial interrogation is very much necessary in the interest of investigation. Accordingly, striking a balance between the individual right of the applicant and that of the societal interest, this Court is of the view that this is not a fit case where the privilege of pre arrest bail can be extended to the applicant and therefore, the petition stands rejected. The interim order dated 25.07.2023 stands vacated. The case diary be returned.

JUDGE

Comparing Assistant