

GAHC010170132023



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

Case No. : Bail Appln./2777/2023

SHAFIKUL ISLAM AND ANR.
S/O MD. MAFIZUDDIN
R/O VILL- HABI DUNGA
P.S. BAGHBAR
DIST. BARPETA, ASSAM

2: JANNAUL HOQUE @ JANNATUL HOQUE
S/O MD. JALILUR RAHMAN
VILL- KARAGRI GOAN

P.S. PATACHARKUCHI
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21.08.2023

Heard Mr. N.J. Dutta, learned counsel for the petitioners. Also heard

Ms. A. Begum, learned APP appearing for the State.

2. By filing this second bail application under section 439 Cr.P.C., the petitioners are seeking regular bail in connection with Sessions Case No. 195/2022, arising out of Jagiroad P.S. Case No. 210/2022, under sections 328/307/379/34 IPC, pending before the Court of learned Sessions Judge, Morigaon.

3. The previous bail application of the petitioners was rejected by this Court by order dated 12.06.2023, passed in Bail Appln. No. 1557/2023. The learned counsel for the petitioners has submitted that in the said order, it is reflected that only 2 (two) out of 11 (eleven) witnesses have been examined as on 20.05.2023. Upon instruction, he has submitted that the last date of the case was fixed on 19.08.2023, but no witnesses have turned up. Thus, as on 19.08.2023, the status of the trial of Sessions Case No. 195/2022 was that only 2 (two) out of 11 (eleven) witnesses have been examined.

4. The learned counsel for the petitioners has submitted that the petitioner no.1 was arrested on 14.05.2022 and therefore, he is in custody for last 463 days and the petitioner no.2 was arrested on 17.05.2022 and therefore, he is in custody for last 460 days. The learned counsel for the petitioners has also submitted that in a similar offence where the petitioners were charged under section 328/392/302/34 IPC, which was registered as Jagiroad P.S. Case No. 192/2022 and tried as Sessions Case No. 194/2022, and the petitioners were granted bail by this Court by order dated 26.07.2023, passed in Bail Appln. No. 2029/2023. It is also submitted that in the scanned copy of the case records, the victim was allegedly poisoned by the petitioners, but the victim was

not subjected to undergo toxicology test to find out if any poison was administered on the victim.

5. Per contra, the learned APP has opposed the prayer for bail on the ground that the petitioners are habitual offender of drugging passengers in their vehicle and thereafter looting or robbing them. It is submitted that in the present case, the victim was drugged while travelling from Guwahati to Nagaon in a private Alto car driven by the petitioner and he was drugged in a tea shop and that while crossing Naziraghat toll gate, the victim became senseless and when he had regained his senses, he found that his belongings, including mobile phone, a charger, cash Rs.20,000/-, laptop, watch, key of his personal car, file, clothes etc. were looted. He was admitted in GMCH and was undergone treatment for 3 (three) days. It is submitted that in a similar case, which has been tried as Sessions Case No. 194/2022, the petitioners had drugged the victim, who was travelling in their vehicle and his belonging were looted and thereafter, the victim had died. Accordingly, it is submitted that the petitioners are habitual offender and therefore, ought not to be released on bail.

6. Having noted that the petitioners have secured bail in connection with Jagiroad P.S. Case No. 192/2022, tried as Sessions Case No. 194/2022, where charges have been framed against the petitioners under sections 328/392/302/34 IPC is higher degree of offence than the offence for which the petitioners are charged in the present case in hand. Moreover, having noted that till 19.08.2023, only 2 (two) witnesses have been examined out of 11 (eleven) witnesses, the Court is of the considered opinion that further custodial detention of the petitioners may not be necessary.

7. It may be mentioned that this Court by order dated 12.06.2023, passed in Bail Appln. No. 1557/2023 had requested the learned Sessions Judge, Morigaon to examine if it would be appropriate to issue directions to the prosecution to produce the remaining witnesses in a time bound manner and to take up the trial of the case by giving short dates and/or to take up the case on day-to-day basis, if the board of the Court so permits. Nonetheless, no witnesses have been examined between 12.06.2023 and 19.08.2023.

8. Hence, the Court is inclined to grant bail to the petitioners, namely, (1) Shafikul Islam, and (2) Jannaul Hoque @ Jannatul Hoque in connection with the Sessions Case No. 195/2022, arising out of Jagiroad P.S. Case No. 210/2022, on their furnishing separate bail bond of Rs.1,50,000/- (Rupees one lakh fifty thousand only) each with two solvent sureties of like amount to the satisfaction of the learned Sessions Judge, Morigaon. It is provided that while accepting the sureties, it would be permissible for the learned Sessions Judge, Morigaon to impose any further conditions for accepting such bail bonds.

9. Subject to other conditions that may be imposed by the learned Sessions Judge, Morigaon while accepting the bail bond, the bail is granted on the following conditions:

- I. The petitioners shall make themselves available to the police or any other investigating agency or Court in the present case as and when required.
- II. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or

to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.

III. The petitioners shall not obstruct the smooth progress of the trial.

IV. The petitioners shall not misuse their liberty in any manner.

V. Along with the bail bond, the petitioners shall give individual undertaking before the Court of learned Sessions Judge, Morigaon that they shall appear on each and every date of the trial. If the petitioners are unable to appear before the said learned Court on any particular date, they would ensure that they are duly represented by their learned counsel on such date and be ready and willing to cross-examine the witnesses and that the petitioners would also provide undertaking that they would have no objection to the recording of the examination-in-chief and cross-examination being recorded in their absence.

VI. The petitioners would submit an undertaking before the trial Court that they would not dispute their identity or the identity of the witnesses when the trial proceeds while they are represented by their learned counsel.

VII. The petitioners shall not leave the jurisdiction of the State of Assam without prior written permission from the learned Sessions Judge, Morigaon.

VIII. In the event the petitioners leave the territorial jurisdiction of the State of Assam without prior permission of the learned Sessions Judge, Morigaon, it would be open to the said learned Court to cancel

the bail of the petitioners and take the petitioners into custody till the completion of trial.

IX. In the event the petitioners are found to be involved in any similar offence and the same is brought to the notice of the learned Sessions Judge, Morigaon, it would be open to the said learned Court to cancel the bail of the petitioners and take the petitioners into custody till the completion of trial.

10. This application stands allowed.

JUDGE

Comparing Assistant