

GAHC010174082023



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

Case No. : Bail Appln./2782/2023

KRISHANA SHILL
SON OF SHRI SHYAMAL SHILL, VILL- PALIRTOL, P.S. JOGIGHOPA, DIST.-
BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H K NATH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

24.08.2023

Heard Mr. J. Borah, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Krishna Shill, who has been languishing in jail hazot since

10.03.2023, in connection with the Sessions Case No. 27(J) 2023, corresponding to Jogighopa P.S. Case No. 94/2023, u/s 302 IPC, for grant of bail.

3. The said case has been registered on the basis of an FIR lodged by one Aren Ch. Das on 09.03.2023. The essence of allegation against the accused Krishna Shill is that on 08.03.2023, at about 10.45 pm he was creating ruckus at 'Daul Festival', being observed at Borghola Anchalik Daul Mandir and he mounted attack upon one Robin Shill, Shivdas Shill and Sadhan Paul by means of a sharp object while they tried to pacify him. Then on the request of mother of the accused, one Tarini Das tried to pacify him, but, the accused administered blow over the chest of Tarini Das by means of a sharp object, as a result, Tarini Das sustained grievous injury on his person and succumbed to the same on the spot.

4. Mr. J Borah, the learned counsel for the accused, submits that the accused was arrested on 10.03.2023, and since then he has been languishing in jail hazoot. Mr. Bora further submits that the case has already been charge sheeted, and the learned Addl. Sessions Judge, North Salmara, Abhayapuri had framed charge under section 302 IPC, but, till today no witnesses have been examined, altogether 15 witnesses have been cited in the charge sheet, and that there is no immediate prospect of the trial being concluded. Referring to an order of the learned Addl. Sessions Judge, dated 13.07.2023, Mr. Borah submits that the learned court below had dismissed the bail petition on the ground that releasing the accused on bail will have adverse impact on the society and on the prosecution witnesses, but there is no such apprehension. It is the further submission of Mr. Borah that there is no chance of absconding and the accused is ready to abide by any the condition imposed by this court while granting bail and therefore, it is contended to allow this petition.

5. On the other hand Mr. R.J. Hazarika, the learned Addl. P.P. has opposed the petition and submits that the accused is charged under section 302 IPC and no witnesses have been examined till date and if the accused is enlarged on bail at this stage then definitely it will have adverse impact upon the society as well as upon the prosecution witnesses

and the same has rightly been observed by the learned court below while rejecting his bail petition. Mr. Baruah, therefore, contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the scan copy of the record received from the learned court below.

7. It appears that there is substance in the submissions, so advanced by Mr. Baruah, the learned Addl. P.P. The accused has been charge sheeted under section 302 IPC. And the learned court below also framed charge against him under the said section. The case is pending for examination of witnesses. If the accused be enlarged on bail at this stage then certainly it will have adverse impact upon the society. Given the nature of the accused as reflected in the materials placed on record, it cannot be ruled out that the witnesses will not be tampered with. It is the jurisprudence of bail, established by Hon'ble Supreme Court, through catena of decisions, and being followed by the courts of India, that while granting bail the courts have to strike a balance between the individual right of the accused with that of the societal interest. That being so, it cannot be said that the grounds, so assigned by the learned court below, in rejecting the bail petition, is contrary to the established jurisprudence. This court is, therefore, left unimpressed by the submission of learned counsel for the accused.

8. The offence, in which the accused is being charged, is indisputably serious in nature. Punishment prescribed for the same is either death or life imprisonment with fine. Not a single witness is examined till date.

9. Having regards to above, and also having regards to the submissions of learned Advocates of both sides, this court is of the considered opinion that this is not a fit case for granting the privilege of bail under section 439 of the Cr.P.C. to the accused. Accordingly, the petition stands dismissed.

10. However, the learned court below is directed to make an endeavor to dispose of the case with right earnest at the earliest possible time, preferably in 3 months from

today without being influenced by any other observation made herein above. If necessary the learned court below shall take recourse to the provision of section 309(1) Cr.P.C.

11. In terms of above this bail application disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant