

GAHC010193682022



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

Case No. : AB/2808/2022

SANTOSH ROY AND 2 ORS
S/O LATE DHANESWAR ROY
RESIDING AT
HOUSE NO. 38, AMBARI, FLYOVER,
P.O. SILPUKHURI, P.S. LATASIL
GUWAHATI-781003, DIST. KAMRUP (M), ASSAM

2: PRATIMA ROY
W/O SANTOSH ROY
RESIDING AT
HOUSE NO. 38
AMBARI
FLYOVER

P.O. SILPUKHURI
P.S. LATASIL
GUWAHATI-781003
DIST. KAMRUP (M)
ASSAM

3: NISHI BALA ROY
W/O LATE DHANESWAR ROY
RESIDING AT
HOUSE NO. 38
AMBARI
FLYOVER

P.O. SILPUKHURI
P.S. LATASIL
GUWAHATI-781003
DIST. KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S N SARMA SENIOR ADVOCATE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

03.01.2023

Heard Mr. S. Rahman, learned counsel for the petitioners and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. 1) Santosh Roy, 2) Pratima Roy, and 3) Nishi Bala Roy have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Dhubri Police Station Case no. 258/2022, registered under Sections 120B/302/34, Indian Penal Code [IPC].

3. The informant in the First Information Report [FIR], lodged on 10.05.2022, has mentioned that at around 11-30 p.m. on 09.05.2022, he was informed that his married daughter, Dipti Ray had committed suicide by hanging in her matrimonial house. The informant has further stated that when he visited the matrimonial house of her deceased daughter, a suspicion arose that her daughter [since deceased] did not commit suicide on her own but it was a pre-planned murder as the accused no. 1 i.e. the husband of the deceased, Dimbeswar Ray had been demanding dowry since earlier. Allegation has also been leveled against the petitioner no. 3 to the effect that she used to exert mental torture upon the deceased.

4. The petitioner no. 1 is the elder brother of Dimbeswar Ray, who was the husband of the deceased. The petitioner no. 2 is the wife of the petitioner no. 1 whereas the petitioner no. 3 is the mother of the petitioner no. 1 and Dimbeswar Ray, that is, the mother-in-law of the deceased.

5. Mr. Rahman, learned counsel for the petitioners has submitted that the petitioners are residents of Guwahati since long. The death of the deceased had occurred in the district of Dhubri, where the deceased used to reside with her husband. The husband of the deceased viz. Dimbeswar Ray was arrested on 11.05.2022 and thereafter, he was released on bail on 10.08.2022 after completion of statutory period of 90 days. He has further submitted that no allegations have been leveled against the petitioner no. 1 and the petitioner no. 2 in the FIR. In so far as the allegation leveled against the petitioner no. 3 is concerned, Mr. Rahman has submitted that the petitioner no. 3 is an old lady, aged about 70 years, and she also resides separately in Guwahati from the deceased and her son, Dimbeswar Ray.

6. Mr. Goswami, learned Additional Public Prosecutor who has received the case diary, has submitted that in the course of investigation, the statements of a number of witnesses including the independent witnesses and relatives of the deceased, have been recorded under Section 161, CrPC. From the statements, it has emerged that the allegations regarding torture upon the deceased prior to her death, have been pointed primarily against the husband of the deceased and one Lipi Bala Ray. The witnesses have not pointed towards the petitioners in any incriminatory manner.

7. As per the post-mortem examination report, the cause of death of the deceased was due to asphyxia as a result of hanging which was ante-mortem in nature.

8. The three petitioners were provided interim protection by order dated 23.09.2022 with the further direction to them to appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from 23.09.2022. In deference of the order dated 23.09.2022, the petitioners have appeared before the I.O. of the case and their statements are found

recorded under Section 161, CrPC. It, thus, go to show that the petitioners have already joined the investigation.

9. Having considered all the aspects mentioned above, this Court is of the considered view that custodial interrogation of the petitioners is not necessary for the purpose of carrying out further investigation of the case and their release on pre-arrest bail, at this stage of investigation, is unlikely to bring any adverse effect in the further investigation of the case, provided they continue to extend their assistance and co-operation in the further investigation of the case.

10. Accordingly, the interim protection granted to the petitioners by order dated 23.09.2022, is made absolute, subject to the condition nos. 1 - 5 set forth in the order dated 23.09.2022.

JUDGE

Comparing Assistant