

GAHC010219172022



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

Case No. : AB/3170/2022

MD BABDHAN ALI @ BAPDHAN ALI
S/O LATE HASMAT ALI
R/O VILL- SINGIMARI
P.S. SIPAJHA
DIST. DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

03.10.2023

1. Heard Mr. H.R.A. Choudhury, learned Senior Counsel for the petitioner as well as Mr. K.K. Das, learned Addl. P.P. appearing for the State respondent.
2. The petitioner, namely, Md. Babdhan Ali @ Bapdhan Ali, has filed this

application under Section 438 Cr.P.C with prayer for pre-arrest bail, as he is apprehending arrest in connection with Sipajhar P.S. Case No. 430/2022, under Section 498(A)/325/307 IPC (Corresponding to G.R. Case No. 1776/2022).

3. It is submitted that the petitioner was all along with his wife who sustained injuries as she accidentally had a fall. The victim was the petitioner's wife, who unfortunately died during treatment.

4. The FIR unfolds that the victim Saheda Begum was subjected to cruelty by the petitioner. On 11.09.2022, the petitioner threatened to kill the victim and then he hit her head against the wall and the victim sustained head injuries. The petitioner did not even provide treatment to the victim but the informant, who is the elder brother of the victim, took her to the GMCH hospital on 22.09.2022. At that time, the victim was undergoing treatment.

5. The learned counsel for the petitioner has submitted that since 11.9.2022, the petitioner took the victim for treatment and he was continuously by the victim's side. The victim had an accidental fall and she sustained the fatal head injuries. The petitioner who was on interim bail has cooperated with the investigation. He was on interim bail since 31.10.2022 and he has cooperated with the investigation. The learned counsel for the petitioner has submitted that this case cannot be considered to be a case under Section 302 IPC just because

the victim passed away after the accidental fall and just because her brother has made some allegation against the victim. There is no ingredient to make out a case under Section 302 IPC or Section 307 IPC.

6. The learned Addl. P.P. has raised objections stating that there are sufficient incriminating materials in the case diary against the petitioner. The post-mortem report also reveals that the injuries were ante-mortem in nature and caused by blunt force impact (except the surgical wound) and death was due to coma, as a result of head injuries. The incident occurred on 11.09.2022 and the victim passed away on 30.09.2022.

7. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.*** reported in *AIR 2011 SC 312*, wherein, it has been observed that:-

“96. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

102. The order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply before a regular bail is contrary to the legislative intention and the judgment of the Constitution Bench in Sibbia's case (supra).

117. The view expressed by this Court in all the above referred judgments have to be reviewed and once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial unless the interim protection by way of the grant of anticipatory bail is curtailed when the anticipatory bail granted by the court is cancelled by the court on finding fresh material or circumstances or on the ground of abuse of the indulgence by the accused."

8. Reverting back to the case, it is manifest that this case was registered under Sections 498(A)/325/307 IPC. The statement of the victim could not be recorded while she was under treatment. The victim died after 18 days. It is true that the accused had appeared before the I/O and his statement was recorded but during the investigation, the victim passed away. This case is taken a new turn after the death of the victim.

9. I have considered the submissions of the learned counsel for the petitioner that the petitioner who was on interim bail since 31.10.2022 has cooperated with the investigation and now forwarding him to custody will not be justified. This submission of the learned counsel for the petitioner cannot be accepted even though the petitioner was on interim bail since 31.10.2022.

10. The FIR clearly reveals that incriminating materials against the petitioner. I have also perused the case diary and there are some incriminating materials against the petitioner, despite the fact that it is submitted on his behalf that his wife sustained injuries due to an accidental fall.

8. I have considered the submissions of both the sides with circumspection. I have also considered the import of the Section under which the petitioner is booked. The content of the case diary is not brought to the fore at this stage. The victim passed away due to the injuries sustained as a result of blunt force impact. I have also scrutinized the post-mortem report. Although, the petitioner was on interim bail, and although his statement has been recorded, I do not find this is a fit case to extend the privilege of anticipatory bail to the petitioner at this juncture.

9. Accordingly, petition stands rejected at this stage.

Send back the case diary.

JUDGE

Comparing Assistant