

GAHC010222212023



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

Case No. : Bail Appln./3517/2023

FATEMA KHATUN @ FATEMA BIBI
W/O MIZZAL HOQUE
R/O VILL- FATTAPARA
P.S. SUKCHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 22.11.2023

Heard Mr. Y. S. Mannan, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Fatema Khatun @ Fatema Bibi* who has been detained behind the bar since 13.05.2023 (since last 189 days) in connection with Sessions Case No. 50/2023 pending before the Court of learned Sessions Judge, South Salmara, Mankachar.

Learned counsel for the petitioner has submitted that on the basis of an FIR which was lodged by one Sayeda Banu on 16.01.2023 naming six nos. of accused persons including the present petitioner wherein it was alleged that the accused persons named in the FIR had assaulted the husband of the informant and caused severe injuries on his person and later on the husband of the first informant succumbed to the said injuries. On the basis of the said FIR of Sukchar P.S. Case No. 14/2023 was registered and an investigation was initiated and after completion of the investigation, charge-sheet was laid against the four accused persons, namely, 1. Foridul Islam, 2. Mizzal Hoque, 3. Ziarul Islam and 4. Fatema Khatun. The accused persons, namely, Lovely Begum and Bulbuli Begum were exonerated. The charge-sheet was laid under Sections 302/34 of the Indian Penal Code.

It is submitted by learned counsel for the petitioner that, in the meanwhile, other three named accused in the FIR, namely, Mizzal Hoque and Ziarul Islam were granted default bail and they are presently on bail. It is further submitted by learned counsel for the petitioner that the present petitioner is detained behind the bar since 189 days, however, the charges are yet to be framed in this case and the next date is fixed on 05.12.2023 for framing of the charges. It is submitted by learned counsel for the petitioner that there is no allegation of physical assault by the present petitioner either in the FIR or in the charge-sheet. It is also submitted by the learned counsel for the petitioner that the petitioner is the wife of the accused No. 3, namely, Ziarul Islam, who has already been enlarged on bail and it is also submitted by learned counsel for the petitioner that the petitioner is permanent resident of village Fattapara under Sukchar Police Station within the jurisdiction of the learned Trial Court and the petitioner is ready to face the trial and shall cooperate in the trial.

Learned Additional Public Prosecutor has also submitted that though there are materials against the present petitioner on record, however, there is no

evidence on record that the petitioner physically assaulted the deceased person. Considering the fact that the two of the co-accused who are facing trial along with the present petitioner are already enlarged on bail and also considering the fact that the petitioner is a woman and has been detained behind the bar since last 189 days and she is ready to face and cooperated in trial, this Court finds no justification to keep the petitioner behind the bar during the pendency of the trial as the completion of the said trial is likely to take a considerable period of time.

In view of the above, the petitioner, namely, *Fatema Khatun @ Fatema Bibi* is hereby allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of learned Sessions Judge, South Salmara, Mankachar, subject to the condition that:-

1. That the petitioner shall cooperate in the investigation and shall appear before the learned Trial Court as and when so required by the said Court;
2. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any of the listed witnesses in the charge-sheet or any other persons who may be acquainted with the facts of the case so as to dissuade such persons from deposing against the petitioner in the pending trial in Sessions Case No. 50/2023 pending before the Court of learned Sessions Judge, South Salmara, Mankachar.

With the above observations, this bail application is, accordingly, disposed of.

JUDGE

Comparing Assistant