

GAHC010227142022



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

Case No. : Bail Appln./2987/2022

MONOWAR HUSSAIN
S/O- MOHIR UDDIN, VILL- 4 NO. BAGHMARA CHAR, P.O. BAGHMARA
CHAR, P.S. ALOPATI CHAR, DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. A M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

18.01.2023

Heard Mr. A.M. Khan, learned counsel for the accused-petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Monowar Hussain has prayed for his release on bail in connection with

Sessions Case no. 157/2022, presently pending before the Court of learned Sessions Judge, Barpeta. The case, Sessions Case no. 157/2022 has arisen out of Alopati Char Police Station Case no. 33/2022, registered for the offences under Sections 306/34, Indian Penal Code [IPC].

3. On completion of investigation in connection with Alopati Char Police Station Case no. 33/2022, the Investigating Officer [I.O.] of the Case submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 27/2022 dated 30.06.2022. On submission of the charge-sheet, the case has been registered as P.R. Case no. 653/2022. By an order dated 19.07.2022, the Court of learned Additional Chief Judicial Magistrate, Barpeta after complying with the procedure prescribed in Section 207, CrPC, committed the case, P.R. Case no. 653/2022 to the learned Court of Sessions, Barpeta. On receipt of the case record of P.R. Case no. 653/2022, the learned Court of Sessions, Barpeta has registered the same as Sessions Case no. 157/2022. On 22.07.2022, the learned Court of Sessions, Barpeta [the trial court] caused production of the accused-petitioner from the judicial custody who was in custody, then, and after hearing the learned counsel for the both sides, the charge under Section 306, IPC was framed against the accused-petitioner as the sole accused. The charge on being read over and explained to the accused-petitioner, he pleaded not guilty and claimed to be tried.

4. In the course of investigation, the accused-petitioner was arrested and produced before the Court of learned Chief Judicial Magistrate, Barpeta on 31.05.2022 and on being so produced, he was remanded to custody. It has, thus, emerged that since 31.05.2022, the accused-petitioner is in custody.

5. The First Information Report [FIR] was lodged by one Faijul Hoque as the informant on 28.05.2022 arraigning 4 [four] persons as accused with the accused-petitioner as accused no. 1 [A-1]. As per the FIR, the marriage of the daughter of the informant, Anjuwara Khatun, aged about 17 years, was solemnized with the accused-petitioner [A-1] about 3 [three] months earlier. The informant had made allegation that since after the marriage, the accused-petitioner at the ill advice of the other accused persons, named in the FIR, continued physical

and mental cruelty upon her. Failing to bear the brunt of such tortures, the daughter of the informant i.e. the wife of the accused-petitioner had committed suicide at around 12 O'clock [Noon] on 27.05.2022 inside the matrimonial house.

6. The Post-Mortem Examination [PME] on the dead body of the deceased was performed on 28.05.2022 at [Fakhruddin Ali Ahmed Medical College](#) & Hospital [FAAMCH], Barpeta. As per the PME Report, there were two wounds on the dead body of the deceased [1] abrasion of size 3x2 cm over right chin and [2] abrasion of size 2x2 cm over left chin. An oblique, non-continuous ligature mark of size 24 cm x 2.5 cm was found present high up on the neck above the level of thyroid cartilage. It was opined in the PME Report that the death was due to asphyxia as a result of ante-mortem hanging. It was further opined that the injuries described were ante-mortem and caused by blunt force impact and the deceased was pregnant of two months at the time of her death. The I.O. of the case in the charge-sheet had reported that sufficient materials against the other 3 [three] accused persons named in the FIR viz. Mohir Ali [A-2], Monuwara Khatun [A-3] and Habel Uddin [A-4] were not found to proceed for trial and hence, they were not charge-sheeted. Finding *prima facie* materials against the accused-petitioner, the I.O. had submitted the charge-sheet only against him. In the charge-sheet, the names of those persons have been enlisted as prosecution witnesses through whom the prosecution has intended to bring home the charge against the accused-petitioner.

7. In the course of trial, the prosecution has examined 5 [five] witnesses till date and they are – PW-1 : Farijul Hoque on 19.09.2022; PW-2 : Jumur Uddin on 19.09.2022; PW-3 : Mazid Ali on 19.10.2022; PW-4 : Rezzak Ali on 19.10.2022; and PW-5 : Nurjahan Begum on 16.11.2022. The names of prosecution witnesses, PW-1 to PW-5 have figured in the list of witnesses in the charge-sheet from serial no. 1 to serial no. 5.

8. The learned counsel for the accused-petitioner has submitted that the prosecution witnesses, examined till date, have not deposed anything implicating the accused-petitioner directly with the offence for which the charge under Section 306, IPC has been framed. The informant, PW-1 in his cross-examination, has deposed to the effect that his daughter i.e. the

deceased and her husband i.e. the accused-petitioner had a happy conjugal life. The other 4 [four] prosecution witnesses, that is, PW-2 to PW-5, have not deposed anything inculcating against the accused-petitioner. It is further submitted by him that with only the official witnesses are to be examined, the accused-petitioner may be released on bail as the possibility of influencing the remaining witnesses are not there and the release of the accused-petitioner, at this stage, will facilitate the accused-petitioner to prepare his defence in an effective manner.

9. It is well settled that the matters to be considered in an application for bail are [i] whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; [ii] nature and gravity of the charge; [iii] severity of the punishment in the event of conviction; [iv] danger of the accused absconding or fleeing, if released on bail; [v] character, behavior, means, position and standing of the accused; [vi] likelihood of the offence being repeated; [vii] reasonable apprehension of the witnesses being tampered with; and [viii] danger, of course, of justice being thwarted by grant of bail. It is no doubt true that while considering an application for bail the aspect of personal liberty of the accused is also a relevant aspect to be considered.

10. Prolonged period of the accused-petitioner's in custody since 31.05.2022 has been urged as prime factor to be considered for his release on bail. The accused-petitioner is, thus, in custody as an undertrial only, not yet convicted, and his personal liberty is also relevant. While considering any prayer for bail, one relevant factor that is to be considered is that during trial, the material witnesses should be in a position to depose without fear and justice being done to the society. Though the learned counsel for the accused-petitioner has referred to the depositions given by the prosecution witnesses in the trial, such depositions ought not be discussed in detail to give an impression that the case is one that would result in a conviction or in contrast, in an acquittal, while passing an order on an application for grant of bail or otherwise. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case. Be that as it may. The prosecution side has intended to bring home the charge against the accused-petitioner by examination of 7 [seven] witnesses, enlisted in the charge sheet. Out of the 7 [seven] witnesses, 5 [five] of

them have already been examined by the learned trial court. 2 [two] witnesses who are remained to be examined are the doctor, who performed the post-mortem examination, and the Investigating Officer [I.O.] of the case.

11. Having regard to the facts that 5 [five] prosecution witnesses have already been examined and the prosecution witnesses remained to be examined, are the autopsy doctor and the I.O. of the case, this Court is of the considered view that the possibility of influencing the witnesses from deposing real facts are remote. It appears that the accused-petitioner is a permanent inhabitant of the locality under Alopatis Char Police Station. The dispositions of the prosecution witnesses, examined so far, with regard to presence or otherwise at the time of the commission of the alleged crime are duly considered.

12. Having regard to all the materials in the case record as regards the role of the accused-petitioner vis-à-vis the alleged crime, as have been discussed above, this Court is of the considered view that any further incarceration of the accused-petitioner, who is in custody since 31.05.2022, appears not necessary for the purpose of the ensuing trial of the case i.e. Sessions Case no. 157/2022 and his release on bail, at this stage of the trial, is unlikely to bring any adverse effect in the ensuing trial.

13. Accordingly, it is directed that the accused-petitioner shall be released on bail on furnishing a bail bond of Rs. 50,000/- with two local sureties of the like amount to the satisfaction of the learned Sessions Judge, Barpeta, subject to the conditions that :-

[i] the accused-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

[ii] the accused-petitioner shall maintain law and order and he shall not commit an offence similar to the offence of which he is accused, or of the commission of which he is suspected;

[iii] the accused-petitioner shall remain present before the court on each date fixed for hearing of the case or as directed by the learned trial court. If he wants to remain

absent, then he shall take prior permission of the Court and in case of remaining absent due to unavoidable circumstances, he shall give intimation to the Court that he may be permitted to be represented by his counsel; and

[iv] the accused-petitioner shall not leave the territorial limits of the trial court without the prior written permission of the trial court.

14. If breach of any of the above conditions is committed, it would be open for the learned trial court to cancel the order of bail and to commit the accused-petitioner to custody, without being influenced by the grant of bail by this order.

15. It is made clear that the observations made above are only in respect of consideration of the present accused-petitioner's prayer for bail and they shall not have any bearing in the ensuing trial.

16. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant