

GAHC010243532022



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

Case No. : Bail Appln./3259/2022

BHASKAR RAO
S/O KRISHNA RAO,
PERMANENT RESIDENT OF KANAN APARTMENT, LAKE TOWN,
GATEBAZAR, SILIGURI, P.S.- BHAKTI NAGAR, DIST.- DARJEELING, WEST
BENGAL AND PRESENTLY RESIDING AT MALIGAON, GOSALA, NEAR
GOSALA POLICE, P.S.- JALUKBARI, GUWAHATI, DIST.- KAMRUP (METRO),
ASSAM.

VERSUS

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

Advocate for the Petitioner : MR. B K MAHAJAN

Advocate for the Respondent : PP, ASSAM

Linked Case : AB/3548/2022

VIJAYA LAKSHMI
W/O BATTA KRISHNA RAO
PERMANENT RESIDENT OF KANAN APARTMENT
LAKE TOWN
NEAR SARADA HARDWARE
WARD NO. 33

P.S. BHAKTI NAGAR
DIST. JALPAIGURI
WEST BENGAL.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. B K MAHAJAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.01.2023

Heard Mr. B.K. Mahajan, learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By the application, B.A. no. 3259/2022 under Section 439, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Sri Bhaskar Rao has prayed for his release on bail in connection with Jalukbari Police Station Case no. 679/2022, registered under Sections 304B/306, Indian Penal Code [IPC].

2.1. By the application, A.B. no. 3548/2022 under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Vijaya Lakshmi has approached this Court seeking the benefit of pre-arrest bail, apprehending her arrest, in connection with the same case, that is, Jalukbari Police Station Case no. 679/2022.

3. The petitioner in B.A. no. 3259/2022 viz. Sri Bhaskar Rao was arrested and thereafter, produced before the Court of learned Chief Judicial Magistrate, Kamrup [M], Guwahati on 20.11.2022 and on being so produced, he was remanded to custody.

3.1. The petitioner in A.B. no. 3548/2022 viz. Vijaya Lakshmi was granted interim protection by order dated 09.12.2022 with a further direction to her to appear before the Investigating Officer [I.O.] of the case within 5 [five] days from 09.12.2022.

4. The First Information Report [FIR] was lodged on 19.11.2022 by the informant stating *inter alia* that the marriage between the informant's daughter i.e. the deceased viz. Rupraj Saha was solemnized with the petitioner in B.A. no. 3259/2022 viz. Sri Bhaskar Rao on 20.11.2022. The petitioner in A.B. no. 3548/2022 viz. Vijaya Lakshmi is the mother of Sri Bhaskar Rao. Since after the marriage, the deceased had to bear the brunt of physical and mental torture from the ends of the two petitioners. At a later point of time, on the advice of a family elder, the deceased and her husband, Sri Bhaskar Rao started residing separately from Vijaya Lakshmi. The informant has alleged that at 10-45 p.m. on 18.11.2022, he received a text message in his mobile phone from his daughter wherein she stated that she was going to commit suicide due to torture of her in-laws. On receiving the text message, he came to Guwahati from Tezpur immediately and reached Guwahati in the morning and saw the deadbody of his daughter at the Police Station. The informant has alleged that the deceased was compelled to commit suicide because of the torture from her in-laws.

5. The learned Additional Public Prosecutor has produced the case diary.

6. I have perused the materials in the case diary, collected during the investigation carried out so far.

7. The case has been registered for the offences relating to abatement to suicide as well as for dowry death. Apart from the statements of the witnesses, the case diary contains the statements of the petitioner in B.A. no. 3259/2022 and the petitioner in A.B. no. 3548/2022. The case diary also contains the post-mortem examination, a Report of the Forensic Science

Laboratory [FSL], Assam and a suicide note written by the deceased. As per the Report of the Forensic Science Laboratory [FSL], Assam dated 09.12.2022, the suicide note, seized by the Investigating Officer [I.O.], was written by the deceased. The Post-Mortem Examination [PME] on the dead body of the deceased was performed on 19.11.2022 at the Gauhati Medical College & Hospital [GMCH]. The PME Report has reported an oblique, non-continuous ligature mark of size 29 cm x 1.5 cm high up in the front and sides of neck above the level of thyroid cartilage. The PME Report has, however, kept the opinion regarding the cause of death pending till receipt of chemical/toxicological report from the Forensic Science Laboratory, Kahilipara.

8. Though the informant has alleged in the FIR that the petitioners used to demand money from his daughter i.e. the deceased, the informant and the relatives of the informant whose statements are found recorded under Section 161, CrPC in the case diary, have not mentioned that the physical and mental tortures inflicted upon the deceased were directed in order to extract dowry. The suicide note of the deceased has not also made any mention that the mental torture inflicted upon her was due to demand of dowry. From the materials in the case diary, it has emerged that on the date of the alleged suicide, the petitioner in A.B. no. 3548/2022 viz. Vijaya Lakshmi was at the house of her married daughter at Lumding. The petitioner, Vijaya Lakshmi is otherwise residing separately from his son and the deceased since about one year prior to the date of the incident. The petitioner, viz. Vijaya Lakshmi pursuant to the order dated 09.12.2022, has appeared before the I.O. of the case and upon her appearance, her statement has been recorded. The statement is available in the case diary. The accused-petitioner in B.A. no. 3259/2022 viz. Sri Bhaskar Rao is in custody for 60 days since 20.11.2022. Though the investigation of the case is still in progress, *prima facie* there appear to be no materials in support of all the ingredients for the offence under Section 304B till date.

9. In view of the nature of materials found available against the petitioner in A.B. no. 3548/2022 viz. Vijaya Lakshmi and considering the facts that she was not at Guwahati on the date of the alleged incident; and that she has already joined the investigation by appearing before the I.O. of the case, the interim protection granted to the petitioner in A.B. no.

3548/2022 viz. Vijaya Lakshmi by order dated 09.12.2022, is made absolute.

10. Having regard to the nature of allegations made in the FIR; the materials available in the case diary; and considering the period of detention of the accused-petitioner in B.A. no. 3259/2022 viz. Sri Bhaskar Rao in custody for 60 days since 20.11.2022 *qua* the offence under Section 306, IPC, this Court is of the considered view that further custodial detention of the accused-petitioner, Sri Bhaskar Rao is not necessary for the purpose of carrying out further investigation of the case and his release on bail, at this stage of investigation, is unlikely to bring any adverse effect in the further investigation of the case, provided he continues to extend his assistance and co-operation in the further investigation of the case. Accordingly, it is directed that the accused-petitioner in B.A. no. 3259/2022 viz. Sri Bhaskar Rao shall be released on bail on furnishing a bail bond of Rs. 40,000/- with one local surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup [M], Guwahati.

11. The benefit of bail granted to the petitioners, are subject to the conditions that :-

- [i] the petitioners shall co-operate with the investigation and make themselves available for interrogation whenever required by the Investigating Officer [I.O.] of the case;
- [ii] the petitioners 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 them from disclosing such facts to the court or to any police officer;
- [iii] the petitioners shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- [iv] the petitioners shall maintain law and order and he shall not commit an offence similar to the offence of which they are accused, or of the commission of which they are suspected; and
- [v] the petitioners shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge sheeted in the case.

12. The appearance of Mr. Jitendra Singha, Sub-Inspector of Police, who has appeared before the Court in person pursuant to the order dated 17.01.2023, is dispensed with.

JUDGE

Comparing Assistant