

GAHC010247662022



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

Case No. : Bail Appln./3337/2022

ABDUL HASIM
S/O LATE A BDUL RAHMAN
R/O VILL- VICHINGCHA PART-I,
P.S. AND DIST. HAILAKANDI.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

01.02.2023

Heard Mr. A. Ahmed, learned counsel for the petitioner as well as Mr. Bankim Sarma, learned Addl. P.P. appearing for the State.

The petitioner, namely, Abdul Hasim, has filed an application under Section 439 Cr.P.C. with prayer for bail as he has been languishing in the jail since

30.05.2022 in connection with Karimganj P.S. Case No. 194/2012, corresponding GR Case No. 508/2012 under Sections 302/201 IPC.

The FIR unfolds that on the night of 30.03.2012, while the informant was fast asleep, a woman came and informed him that a body is lying in the Monosangan field. He immediately went there, but could not identify the body. He noticed injuries on the body caused by sharp weapon. The deceased person was attired in a lungi and a vest.

Investigation commenced and finally charge-sheet was laid against the petitioner along with 3 other accused. The petitioner was shown as absconder. As the petitioner was unaware about the proceeding he did not appear before the respective Court. The I.O. also never called the petitioner, but finally charge-sheet was laid against him showing him as absconder.

It is submitted that the case is still at the appearance stage and the other accused persons have not appeared. Charge-sheet reveals that there are as many as 12 witnesses who are to be examined and it is fathomable that trial is unlikely to conclude any time soon. This will curtail the petitioner's personal liberty. It is also submitted that there is every possibility that the petitioner is likely to be acquitted from the charges. The petitioner has pledged to co-operate with the trial. It is submitted that he is not a repeat offender or a flight risk.

The learned Addl.P.P. has raised serious objections stating that the conduct of the petitioner clearly depicts that he is a flight risk. He was evading arrest. The alleged incident occurred in the year 2012. This case has been protracted by the conduct of the accused persons.

The learned Addl. P.P. has stated that it is clear from the charge-sheet No. 334/2016 marked as Annexure-2 that the investigating officer was unable to

arrest the petitioner which led to the late filing of charge-sheet.

It has been held by the Hon'ble Supreme Court on the decision of ***Satender Kumar Antil Vs Central Bureau of Investigation and Another*** reported in (2022)10 SCC 51 that:-

"67.The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice."

"68.Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in [the Code](#), has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest."

I have perused the scanned copies of the LCR.

The learned Sessions Judge in charge rejected the bail prayer of the petitioner vide order dated 07.11.2022 in connection with Misc.Bail Application No. 410/2022 in connection with Karimganj PS Case No. 194/12 and GR Case No. 1508/2012 holding that the petitioner by his past conduct has contributed himself to such uncertainty/delay in commitment of the case in addition to delay which arises to a high probability of his absconding if enlarged on bail.

I have considered the submissions of the learned counsel of the petitioner that trial has not commenced. The charge-sheet reveals that there are as many as 12 witnesses who are to be examined and there is every likelihood that the trial would be protracted. The petitioner has pledged to appear before the learned trial Court without fail.

In view of the foregoing discussions and considering the submissions of the petitioner that he will co-operate with the trial and will not jump bail and considering all aspects, petition is allowed.

I have also considered the length of detention of the petitioner.

The petitioner, namely, Abdul Hasim is enlarged on bail in connection with Karimganj P.S. Case No. 194/2012, corresponding GR Case No. 508/2012 under Sections 302/201 IPC, on furnishing bail bond of Rs.50, 000/- with one suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Karimganj under the conditions that:-

- (1) the petitioner will not exercise threats to witnesses; and
- (2) the petitioner will co-operate with the trial.

Send back the case diary.

The case is disposed of.

JUDGE

Comparing Assistant