

GAHC010249872022



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

Case No. : Bail Appln./3378/2022

NISHANT SHARMA
S/O- SRI BIJOY SHARMA, R/O- MILAN NAGAR J LANE, P.O. C.R BUILDING,
P.S. AND DIST.- DIBRUGARH, ASSAM, PIN- 786010

2: SANJOY SHARMA @ SANJAY KUMAR SHARMA
S/O- SANTOSH KUMAR SHARMA
R/O- BABULAL PODDAR PATH
JHALUKPARA
P.O.
P.S. AND DIST.- DIBRUGARH
ASSAM
PIN- 78601

VERSUS

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

Advocate for the Petitioner : MR N N UPADHYAYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 15-02-2023

- 1.** Heard Mr. D. Boruah, learned counsel for the petitioners. Also heard Mr. B.B. Gogoi, learned Addl. P.P. for State and Mr. R.S. Mishra, learned counsel for the informant.
- 2.** The petitioners namely [1] Sri Nishant Sharma and [2] Sri Sanjoy Sharma @ Sanjay Kumar Sharma have filed an application under Section 439 Cr.P.C. The learned counsel for the petitioners has not pressed the petition for the petitioner No. 1 Nishant Sharma as he has already been enlarged on bail. The petitioner Sanjoy Sharma @ Sanjay Kumar Sharma has filed an application under Section 439 Cr.PC with prayer for bail as he has been in judicial custody since 01.08.2022. The petitioner has also prayed for bail on the grounds of parity as petitioner No. 1 Sri Nishant Sharma was enlarged on bail in connection with Criminal Bail Application No. 34/2023.
- 3.** On the other hand the learned Addl. P.P. has submitted an order of the coordinate Bench dated 09.02.2023 in connection with Bail Application No. 3679/2022 wherein the co-accused persons Md. Samsullah Khan and Md. Baidullah Khan were not granted bail. So stating, it is submitted that the question of parity does not arise in connection with the prayer by the petitioner and in case it arises his bail prayer ought to be rejected. The FIR unfolds that numerous FIRs has been lodged against Sanjay Kumar Sharma along with the co-accused. Finally in addition to FIRs dated 01.07.2022 and 05.07.2022 another FIR was lodged by the informant Shri Kailash Kr. Bagaria on 07.07.2022 that his son Vineet Bagaria committed suicide on being abetted, due to the physical and mental harassment inflicted upon him by the petitioners as well as the co-accused persons named in the FIR. During investigation, the petitioner surrendered before the police and he was forwarded to custody. He has been falsely implicated in this case with ulterior motive. The petitioner's shop was vandalised by the informant and the petitioner lodged an FIR against the informant. At present the petitioner has prayed for bail as chargesheet has been laid against him and the petitioner's custodial detention is not required and his custodial detention will serve no purpose. The petitioner has pledged to co-operate with the trial. No case under Section 306 has been made out against the petitioner and the petitioner is entitled to bail.
- 4.** The learned Addl. P.P. has raised serious objection stating that as there was sufficient materials against the petitioner, charge-sheet was laid against him. The petitioner is of overbearing personality and he appears to be a threat to the witnesses. The Case Diary

clearly reveals that the deceased and his family were attacked on 30.06.2022. The deceased was also threatened that his minor daughter would be kidnapped and so FIR dated 04.07.2022 was lodged and thereafter another FIR dated 05.07.2022 was lodged but no prompt action was taken. Finally the deceased was instigated to take a drastic step.

5. I have given my anxious consideration to the submissions at the Bar. The role of the petitioner has been reflected through the submissions of the learned Addl. P.P. I have also perused the scanned copies of the CD. There are indeed cogent materials in the Case Diary against the petitioner. The scanned copies of the LCR reveals that Charge Sheet has been laid against 5 accused-persons and one accused Azizullah Khan is shown as absconder.

6. It is also submitted that the list of witnesses reveals that 32 witnesses have been enlisted as witnesses in this case, and one accused has been shown as absconder. The appearance of these accused will cause a delay in the trial and if all the witnesses are to be examined, the petitioner's personal liberty will be curtailed to such an extent that will cause violation of the Article 21 of the Constitution of India.

7. At this juncture it appears that four accused-persons have already been arrested. Charge-sheet has also been laid and trial will commence if all the accused-persons appear before the Court to face the trial. It is not a case where investigation is procrastinating or trial is protracted. The conduct and role of the petitioner which could be deciphered appears to be such that the propensity to exercise threats to the witnesses may be possible. The witnesses may be hesitant to divulge the entire incident which may lead to injustice and create a hurdle in fair trial. Considering all aspects and in view of my foregoing discussions, at this juncture I am not inclined to grant bail to the petitioner. Petition stands rejected at this stage. However, petitioner is at liberty to apply for bail if the trial is protracted or procrastinated to the extent that his liberty is curtailed.

Petition is rejected at this stage.

JUDGE

Comparing Assistant