GAHC010250922022

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

Case No. : AB/3627/2022

HASMAT ALI
S/O LATE JOYNAL ABEDIN
R/O VILL- HATIPOTA
P.O. AND P.S. DHALIGAON
DIST. CHIRANG (BTR), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 03-01-2023

Heard Mr. A.K. Talukdar, learned counsel for the accused-petitioner in B.A. no. 3461/2022; Mr. M.I. Hussain, learned counsel for the accused-petitioner in B.A. no. 3473/2022; Mr. D.A. Kaiyum, learned counsel for the petitioner in A.B. no. 3627/2022; and Mr. B. Sharma, learned Additional Public Prosecutor for the

respondent State of Assam.

2. As these applications have arisen out of Jogighopa Police Station Case no. 181/2022, registered for offences under Sections 328/392/212/395, Indian Penal Code [IPC], they are taken up together for consideration at the request of the learned counsel for the parties.

3. By the two applications under Section 439, Code of Criminal Procedure, 1973, the accused-petitioner viz. Akhida Khatun in B.A. no. 3461/2022 and the accused-petitioner viz. Abdul Hanif Miya in B.A. no. 3473/2022 have prayed for their release on bail in connection with Jogighopa Police Station Case no. 181/2022, registered for offences under Sections 328/392/212/395, IPC. By the application, A.B. no. 3627/2022 under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Hasmat Ali has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Jogighopa Police Station Case no. 181/2022, registered for offences punishable under Sections 328/392, IPC.

4. Both the accused-petitioners in B.A. no. 3461/2022 & B.A. no. 3473/2022 were arrested and produced before the Court of learned Sub-Divisional Judicial Magistrate, North Salmara, Abhayapuri on 16.11.2022 and on being so produced, they were remanded to custody. Thus, since 16.11.2022, the two accused-petitioners in B.A. no. 3461/2022 & B.A. no. 3473/2022 are in custody.

5. In the First Information Report [FIR] lodged on 30.10.2022, it has *inter alia* been alleged that in the night intervening 29.10.2022 and 30.10.2022, an act of dacoity was committed in the house of one Abdul Kader Mazumdar by

unknown miscreants. As per the FIR, in the morning hours of 30.10.2022, Abdul Kader Mazumdar and all other inmates of the house were found sleeping in their beds in unconscious conditions. The household articles were found at sixes and sevens and there was suspicion that the inmates of the house were made unconscious after mixing some intoxicated substance in their food in the previous night.

6. In the course of investigation, the two accused-petitioners herein along with few other persons have been arrested on the ground of their suspected involvement in the act of dacoity.

7. Mr. Talukdar, learned counsel for the accused-petitioner in B.A. no. 3461/2022 has submitted that the accused-petitioner was formerly married to one Shohidul Islam, who has been considered to be the main culprit in the crime. The accused-petitioner, Akhida Khatun had stopped her relationship with Shohidul Islam since July, 2022 by unilaterally dissolving the marital tie by executing an affidavit. Moreover, the accused-petitioner is carrying pregnancy of about 7 [seven] months as on date. As such, she may be allowed to go on bail considering the afore-said circumstances.

8. Mr. Hussain, learned counsel for the accused-petitioner in B.A. no. 3473/2022 has submitted that the forwarding report dated 16.11.2022 has itself reflected that the involvement of the accused-petitioner is only with regard to a vehicle whereby the suspected persons involved in the crime were transported. The accused-petitioner in B.A. no. 3473/2022 was merely roped in as an accused only because his vehicle was hired by the suspected accused persons involved in the crime.

9. Mr. Kaiyum, learned counsel for the petitioner in A.B. no. 3627/2022 has submitted that there was no involvement of the petitioner in the alleged act of dacoity. The petitioner in A.B. no. 3627/2022 is only a jeweler, who had been approached by the suspected accused persons for selling of gold and in the course of business, he had purchased the same. He did not suspect that the gold produced before him was proceeds of crime.

10. Mr. Sharma, learned Additional Public Prosecutor who has received the case diary, has vehemently opposed the prayers for bail of the accused-petitioners/petitioner contending that the accused-petitioners/petitioner were vey much found involved in the commission of dacoity in the house of Abdul Kader Mazumdar.

11. I have perused the materials available in the case diary, collected during the course of investigation carried out so far. I have also perused the statements of the arrested accused persons, 7 [seven] in nos. till date, recorded under Section 161, CrPC. I have also perused the statements of the other witnesses whose statements are recorded under Section 161, CrPC. From the materials in the case diary, it has emerged that the inmates of the house of Abdul Kader Mazumdar including Abdul Kader Mazumdar were made unconscious because some substance had been mixed in the meal prepared in the previous night for the family members. One Trofika Sultana was found to be the person who had mixed the substance in the meal prepared in the night of 29.10.2022. The statements of the witnesses go to corroborate the fact that all the inmates of the house of Abdul Kader Mazumdar were found lying in their respective beds in an unconscious state. The materials further go to indicate that the arrested accused persons including the present two accused-petitioners

viz. Akhida Khatun and Abdul Hanif Miya were involved in the entire transaction leading to the crime of dacoity and subsequent disposal of the items looted in the act of dacoity. The involvement of the petitioner in A.B. no. 3627/2022 is also found as he was the recipient of the gold/gold ornaments looted from the house of Abdul Kader Mazumdar. Though a number of accused persons involved in the crime have been arrested, the main three accused persons are still at large evading arrest. The materials in the case diary are clearly, suggestive of the fact that the act of dacoity has been committed in a number of places and in an organized manner with the involvement of an organized group.

12. Having considered the nature of gravity of the offences and the ample incriminating materials against the petitioners/petitioner herein, I am not inclined to extend the benefit of bail/pre-arrest bail under Section 439, CrPC and Section 438, CrPC to the accused-petitioners/petitioner herein at this stage of investigation. Accordingly, the respective prayers for bail are rejected resulting in the dismissal of all the three bail applications, B.A. no. 3461/2022, B.A. no. 3473/2022 & A.B. no. 3627/2022.

JUDGE

Comparing Assistant