

GAHC010251162022



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

Case No. : AB/3648/2022

BINOD KR DEKA
S/O LATE PRAFULLA CH. DEKA
R/O BAGORBARI, HOUSE NO. 03, P.S. SANCHAL (SATGAON),
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 04-01-2023

Heard Mr. A.K. Bhuyan, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Shri Binod Kumar Deka has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Tezpur Police Station Case no. 2450/2021, registered for the offence under Section 306, Indian Penal Code [IPC].

3. In the First Informant Report [FIR] registered on 03.11.2021, the informant has

mentioned that the body of one Bhabendra Nath Tamuli, a resident of Mohatetelli, Tezpur was found hanging in the backside of his own residence. The FIR has also made mention about existence of a suicide note wherein the name of one Sri Parag Bora has been mentioned.

4. Mr. Bhuyan, learned counsel for the petitioner has submitted that the petitioner was earlier a member of the Assam Civil Service and he retired from service on superannuation of Joint Secretary to the Government of Assam on 30.06.2018, the only connection that could be envisaged in context of the case is that the petitioner was once posted as a Circle Officer at Tezpur, District – Sonitpur.

5. I have perused the materials available in the case diary including the suicide note allegedly written by the deceased, Bhabendra Nath Tamuli. In the suicide note, he has mentioned the names of the petitioner, one Sri Rajib Saikia, Mauzadar of Bihguri Mauza and Sri Parag Bora a Lot Mandal. In the suicide note, the deceased had made mention about a land deal which was transacted and completed in the year 2010-2011. As per the suicide note, there was some fraudulent act on the part of the persons named in the FIR.

6. Thus, from the materials in the case diary including the suicide note, it has emerged that the alleged land deal occurred in the year 2010-2011. There are no materials in the case diary which go to suggest that there was any kind of relation and/or transaction and/or communication between the petitioner and the deceased during the period from 2010-2011 till the death of the deceased. There has to be existence of materials in regard to abetment. In the absence of any *prima facie* material regarding instigation, etc. from the end of the petitioner preceding the death of the deceased by suicide, this Court considered view that the petitioner has made out a case for extension of the benefit of pre-arrest bail under Section 438, CrPC to him. The petitioner has already been extended interim protection by order dated 09.12.2022 with a further direction to him to appear before the I.O. of the case within 7 [seven] days from 09.12.2022. The petitioner has accordingly appeared before the I.O. of the case within the stipulated period and has, thereby, joined the investigation.

7. Considering the fact that the petitioner has already joined the investigation by

appearing before the I.O. of the case and there are no *prima facie* materials connecting the petitioner with the alleged suicide of the deceased, the interim protection granted to the petitioners by order dated 09.12.2022, is made absolute, subject to the following conditions :

- [i] the petitioner shall appear before the Investigating Officer [I.O.] of the case as and when his presence is required by the I.O. in the investigation of the case;
- [ii] the 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; and
- [iii] the petitioner 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.

8. The application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant