

GAHC010252462022



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

Case No. : Bail Appln./3409/2022

SURAJ SEN @ CHOTU
S/O LATE SITA RAM SEN @ SITARAM SEN,
VILL.- KRISHNA NAGAR, WARD NO. 12, P.S.- HOJAI, DIST.- HOJAI, ASSAM.

VERSUS

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

Advocate for the Petitioner : MR. A SAIKIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 23.01.2023

Heard Mr. A.S. Ali, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned APP appearing for the State.

2. The petitioner, namely, Suraj Sen @ Chotu, who was arrested on

21.05.2021, is seeking regular bail under section 439 Cr.P.C. in connection with P.R.C. Case No. 1118/2021, under sections 120(B)/302 IPC read with section 25(1-A)/27 of the Arms Act, arising out of Hojai P.S. Case No. 888/2019.

3. In the said case, charge-sheet has been submitted and the learned Judicial Magistrate First Class, Hojai, by order dated 11.08.2021 has taken cognizance of the offence committed by the petitioner under sections 120(B)/302 IPC read with section 25(1-A)/27(1-A) of the Arms Act.

4. The learned counsel for the petitioner has submitted that there is no provision of section 27(1-A) in the Arms Act. It is also submitted that all the other accused persons have been enlarged on bail and therefore, on the ground of parity, the petitioner is seeking bail.

5. The learned APP has opposed the prayer for bail.

6. On perusal of the scanned copy of the case diary, it appears that the investigation carried out so far implicates the petitioner of having shot the victim with an unlicensed pistol in his forehead, which had resulted in his death. As per the medical opinion of death, the cause of death was "shock, as a result of head injury caused by bullet".

7. It appears that the learned counsel for the petitioner has correctly pointed out that there is no provision in the Arms Act relating to section 27(1-A). Nonetheless, the petitioner is further charged with a higher offence of section 302 IPC, merely because the learned Judicial Magistrate First Class has taken cognizance of offence under section 27(1-A) of the Arms Act would be of no consequence in light of the evidence collected so far that the petitioner had shot the victim on his head by unlicensed pistol. Moreover, taking cognizance of

offence and framing of charge is two different things. In this case, charge is yet to be framed. It is observed that as per the case diary, the unlicensed pistol was of a foreign made (USA). It further appears that the investigation carried out so far implicates the petitioner and other co-accused of being drug addicts and as the unlicensed pistol and ammunition has been received from the custody of the petitioner, despite bail being granted to the other co-accused, the Court finds that this is not a fit case to release the petitioner on bail merely on the ground of parity.

8. It would now be appropriate to deal with the plea of “principle of parity” in the matter of grant of bail, raised by the learned counsel for the petitioner. It may be mentioned that the Supreme Court of India, in the case of *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*, (2021) 6 SCC 230, had held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. It was observed as under:-

“26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020, the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhrajsinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A-16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhrajsinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been

established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."

9. The said view was again approved by the Supreme Court of India in the case of *Mahadev Meena v. Praveen Rathore & Anr., (2021) 0 Supreme(SC) 518: 2021 SCC OnLine 804*. Therefore, notwithstanding that other co-accused were granted pre-arrest bail, but the petitioner herein stands in a different footing as the materials collected in course of investigation discloses sufficient materials against the petitioner, for which, in the opinion of the Court, this is not a fit case for grant of bail to the petitioner.

10. Accordingly, the prayer for bail is rejected at this stage.

JUDGE

Comparing Assistant