

GAHC010257492023



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

Case No. : Bail Appln./4185/2023

HAMIDUL ISLAM
S/O- BAKKAR ALI SHEIKH, RESIDENT OF KAZAIKATA PART-V, P.S.
BILASIPARA, DIST.- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24-11-2023

Heard Mr. A.A.R. Karim, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Sri Hamidul Islam, who has been detained behind the bars since 01.11.2023 in connection with Chandmari P.S. Case No. 389/2023 under Section 302/201 of the Indian Penal Code.

The gist of accusation against the present petitioner in this case is that on 29.10.2023, one Romila Khatun, has lodged an FIR, before the Officer-In-Charge of Chandmari Police Station, *inter-alia*, alleging that on 28.10.2023, the first informant came to know through T.V. news channels that someone has killed her son, namely, Imdadul Islam @ Priyanka and kept the deadbody at Chandmari.

It is alleged in the FIR that the son of the deceased, namely, Imdadul Islam @ Priyanka was working as 1st-time transgender along with another transgender, namely, "Radha", who used to mercilessly assault the son of the first informant and it is further alleged in the FIR that about two months prior to the incident the said "Radha" threatened the son of the first informant to killed him.

Learned counsel for the petitioner submits that the petitioner was the friend of the deceased and he used to stay with the deceased, however, three months before the alleged incident, he had parted with the company of the deceased.

It is further submitted that the petitioner is no way involved in the offence alleged in the FIR and he has been detained behind the bars for last 23 days.

On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner on the ground that investigation of the Chandmari P.S. Case No. 389/2023 is at its initial stage.

He has also produced the case diary of Chandmari P.S. Case No. 389/2023 and has submitted that the present petitioner was the friend of the deceased

and used to stay with the deceased in the same rented house. However, about three months ago, they left their rented house.

It is further submitted by learned Additional Public Prosecutor that the present petitioner has stolen away the mobile phone of the deceased and as the mobile phone of the deceased was recovered from the possession of the present petitioner, the learned Additional Public Prosecutor submits that there is every possibility of the present petitioner being involved in the alleged offence and therefore, he opposed the grant of bail to the present petitioner.

I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record including the case diary of Chandmari P.S. Case No. 389/2023.

On perusal of the FIR, it is apparent that no allegation has been levelled against the present petitioner by the first informant and the specific allegations levelled against one Radha. The only material against the present petitioner at this stage of investigation is that the mobile phone of the deceased has been recovered from the possession of the present petitioner. There are also materials in the case diary to show that the petitioner has parted company of the deceased much before the incident had occurred. Hence, at this stage of the investigation there are not much incriminating evidence against the petitioner to justify his further detention as he has already been detained behind the bars for last 23 days.

Considering the above facts, the above-named petitioner, is hereby allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M) with conditions that:-

- (i) the petitioner shall appear before the Investigating Officer of

Chandmari P.S. Case No. 389/2023 as and when so required by the Investigating Officer for the sake of completion of fair investigation and shall co-operate in the investigation; and

(ii) the petitioner shall not directly or indirectly make any inducement threat or promise to the victim or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court.

With the above observations, this bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant