

GAHC010258092022



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

Case No. : Bail Appln./3483/2022

BIPIN GOGOI ALIAS PUTOU GOGOI
SON OF LATE KHAGEN GOGOI
S/O LATE KHAGEN GOGOI
R/O SAMABAI MAJ GAON
WARD NO. 1, P.S. SILAPATHAR
DIST. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 15-02-2023

Heard Mr. R. Sarma, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Addl.P.P. appearing for the State.

2. The petitioner Sri Bipin Gogoi @ Putou Gogoi has filed an application under Section

439 Cr.P.C. with prayer for bail as he has been in judicial custody since 30.07.2021 in connection with Sessions Case No. 53(DH)/2021 under Section 302/324 of the Indian Penal Code (IPC for short) pending in the Court of Sessions Judge, at Dhemaji arising out of Silapathar Police Station P.S. Case No. 363/2021 under Section 302/34 IPC and corresponding G.R. Case NO. 852/2021 (SLP).

3. It is submitted on behalf of the petitioner that he is a permanent resident of Samabai Maj Gaon, Ward No. 1, under Silapathar P.S. He is a daily wage earner and a respectable person of the society. He has no criminal antecedents and he is a law abiding citizen. He was arrested on 30.07.2021 and produced before the Chief Judicial Magistrate, Dhemaji on 02.08.2021. Charge-sheet has been laid against him and thereafter this case against him was committed for trial and is now pending in the Court of the learned Sessions Judge, Dhemaji, and is numbered as Sessions Case No. 53(DH)/2021. Charges have already been framed against him vide order dated 29.11.2021. The trial of this case has been procrastinated. Several dates have been fixed for evidence, but the prosecution is unable to conclude the trial. Witnesses are yet to be examined.

4. The Sessions Case No. 53(DH)/2021 was fixed for evidence from 29.11.2021 to 01.12.2022 and summonses were issued to the witnesses, but the prosecution has failed to examine a single witness till date.

5. It is also submitted that the petitioner has been falsely implicated as the informant is his step mother. The informant was already a married woman with children from her earlier marriage. She used to live with the petitioner's father and finally both started staying together in a separate house. The petitioner's father used to quarrel frequently with the

informant and finally on 20.07.2021, after a commotion emanated from the house of the deceased, the deceased was found in an injured condition on the road. Finally, the deceased succumbed to his injuries. The petitioner has also prayed for bail to prepare his defence against a false case foisted against him. He is the sole bread winner of the family and his mother and brother are suffering immensely. He has pledged to co-operate with the investigation.

6. The learned Addl.P.P. has raised serious objections stating that the petitioner is aggressive by nature. There are materials in the case diary against him that he has killed his own father. Charge-sheet has been laid against him under Sections 302/324 IPC. The petitioner is charged with murder of his father as well as causing injuries on his step mother. In the event he is granted bail there is every possibility that he will exercise threats to witnesses. The FIR clearly reveals that the petitioner dealt a fatal blow on his father and also dealt a blow with his dao on the informant.

7. I have considered the submissions at the bar.

8. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Dinubhai Boghabhai Solanki Vs. State of Gujarat and Others*** reported in (2014) 4 SCC 626 wherein it has been observed that:-

“65. We are not much impressed by the submission of Mr Rohatgi that the appellant-petitioner ought to be released on bail simply because he happens to be a sitting MP, nor are we much impressed by the fact that further incarceration of the appellant-petitioner would

prevent him from performing his duties either in Parliament or in his constituency. So far as the Court is concerned, the appellant-petitioner is a suspect/accused in the offence of murder. No special treatment can be given to the appellant-petitioner simply on the ground that he is a sitting Member of Parliament. However, keeping in view the fact that CBI has submitted the supplementary charge-sheet and that the trial is likely to take a long time, we deem it appropriate to enlarge the appellant-petitioner on bail, subject to the following conditions:.....”

9. The learned counsel for the petitioner has also relied on the decision of the Hon’ble Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation* reported in (2022)10 SCC 51 wherein it has been observed that:-

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine,

the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.....”

10. The learned counsel for the petitioner has submitted that this case will fall under Sections 304 Part II of IPC and not under Section 302 IPC, and there is every possibility that the petitioner will be acquitted as a false case has been slammed against him and not a single witness has been examined so far.

11. Per contra, the learned Addl.P.P. has relied on the decision of the Hon'ble Supreme Court in State of Bihar Vs. Rajballav Prasad Alias Rajballav Prasara Yadav (2017) 2 SCC178 wherein it has been observed that :-

“ We are conscious of the fact that the respondent is only an undertrial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering bail applications of the accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public

interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice-delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat to fair trial because of intimidation of witnesses, etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer. This is so beautifully captured by this Court in Masroor v. State of U.P. [Masroor v. State of U.P., (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] in the following words: (SCC p. 290, para 15) "15.

There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following Panna Lall Agarwal v. State of Sikkim 507 observations of this Court in Shahzad Hasan Khan v. Ishtiaq Hasan

Khan [Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684 : 1987 SCC (Cri) 415] are quite apposite: (SCC p. 691, para 6)

‘6. ... Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution.’ ”

12. I have given my anxious consideration to the submissions at the Bar.

13. I have perused the scanned copies of the LCR.

14. Charges have been framed on 29.11.2021 and since then the prosecution has failed to produce a single witness in the Court. The alleged incident occurred on 22.07.2021. It is not clear, at which stage the corresponding Sessions Case No. 53(DH)/2021 is pending. Trial may have progressed. *Ex facie*, the allegation reveals that the petitioner behaved in an aggressive manner.

15. The evidence will reveal if this case is under Section 304 Part-II or under Section 302 IPC. The details of the statements of the witnesses have not been brought to the fore. As trial is pending against the petitioner, the informant who is also an injured person in this case may be apprehensive of threats.

16. I have considered the concern of the petitioner as well as the concern of the prosecution. The prosecution has submitted that the petitioner has an overbearing personality. Atleast the statement of the victim ought to be recorded. This case does not appear to be an old pending case. Trial has already commenced.

17. At this juncture, I am not inclined to grant bail to the petitioner. However, the petitioner is at liberty to apply for bail if trial will be delayed.
18. Petition with prayer for bail is rejected at this stage.

JUDGE

Comparing Assistant