

GAHC010261112023



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

Case No. : Bail Appln./4253/2023

MD ALLAD CHAN
S/O LT. NASIMUDDIN
R/O VILL- TEDHERA GOAN
P.S. BAGHBAR, DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 23.11.2023

Heard Mr. P. Kataki, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Allad Chan, who has been detained behind the bar since 26.07.2023 in connection with Sessions Case No. 213/2023 under Section 306 of the IPC.

Learned counsel for the petitioner submits that the instant Sessions case is a result of an FIR filed by one Bhanu Begum on 10.07.2023 before the officer-in-charge of Baghbar Police Station, *inter-alia*, alleging that the accused persons named in the FIR including the present petitioner that killed the daughter of the first informant and hanged her to the wooden frame of the ceiling.

On the basis of the said FIR, the Baghbar P. S. Case No. 42/2023 was registered under Section 302/34 of the IPC and thereafter, investigation was initiated and on completion of the investigation, charge-sheet was laid against the present petitioner only under Section 306 of the IPC and no ingredients of offence under section 302 was found during investigation as alleged in the FIR.

It is submitted by learned counsel for the petitioner that there are 13 listed witnesses in the charge-sheet and the petitioner has been detained behind the bar since more than 125 days and the petitioner is a permanent resident of Barpeta District under the jurisdiction of learned trial court and he shall face trial.

Learned counsel for the petitioner has also submitted that when the petitioner had approached the learned trial court for bail, his prayer for bail was rejected on the 09.11.2023, on the ground that there is a chance of influencing the witnesses by the accused. However, the learned counsel for the petitioner submits that no grant for such an observation has been mentioned in the order

by which bail was rejected by the learned Sessions Judge.

Learned counsel for the petitioner has submitted that the observation made by learned trial court while rejecting the bail does not have any basis available on record.

On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the petitioner at this stage and submits that the prayer for bail may be considered after examination of the witnesses.

I have considered the submissions made by learned counsel for both the sides and have gone through the materials on record.

There are 13 witnesses listed in the charge-sheet and on two occasions when the prayer for bail of the present petitioner was rejected by the learned trial court, nothing was mentioned in the rejection order as to why it was apprehended that the present petitioner may threaten the witnesses, no material is available to suggest that the petitioner has ever attempted to threaten the listed witness.

Considering the fact that the petitioner has been detained behind the bar since more than 125 days and he is ready and willing to face trial, his custodial detention does not appear to necessary for fair completion of trial of Sessions Case No. 213/2023.

In view of the above, the present petitioner, namely, Md. Allad Chan, is hereby allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the learned Sessions Judge, Barpeta with the following conditions:

i. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case

before the learned Trial Court during trial.

ii. That the petitioner shall co-operate in the trial and shall appear before the learned Trial Court as and when so required for the sake of fair completion of the trial.

With the above observation, this instant bail application is accordingly disposed of.

JUDGE

Comparing Assistant