

GAHC010261652022



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

Case No. : Bail Appln./3559/2022

REJIA KHATUN AND ANR
W/O MD. RAHMAN ALI
R/O NISSILAMARI
P.S. DHEKIAJULI
DIST. SONITPUR, ASSAM

2: MD. MAINUL HOQUE
S/ MD. RAHMAN ALI
R/O NISSILAMARI
P.S. DHEKIAJULI
DIST. SONITPUR
ASSA

VERSUS

THE STATE OF ASSAM
REP. HEREIN BY ITS PP, ASSAM

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

18.01.2023

Heard Mr. S. Borthakur, learned counsel for the accused-petitioners and Mr. M.P. Goswami,

learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. 1) Rejia Khatun, and 2) Md. Mainul Hoque have has prayed for their release on bail in connection with Dhekiajuli Police Station Case no. 334/2022, registered under Sections 304B/34, Indian Penal Code [IPC].

3. The accused-petitioners were arrested and produced before the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur on 15.11.2022 and on being so produced, they were remanded to custody.

4. In the First Information Report [FIR], lodged on 15.11.2022, the informant has named four persons as accused including the two accused-petitioners as accused no. 2 [A-2] and the accused no. 3 [A-3] respectively. In the FIR, the informant has stated that the marriage between his daughter and the accused no. 1 [A-1] named in the FIR, Md. Ahijul Islam was solemnized on 15.07.2022 and since the date of their marriage, there were tortures-both physical and mental upon-his daughter by her husband i.e. the accused no. 1 [A-1] at the instance of the other accused persons on the demand of dowry. Unable to bear the brunt of tortures, the informant's daughter had to leave her matrimonial house and took shelter in her paternal house by their in-laws family. But on 13.11.2022, the informant's daughter, Sajeda Khatun was persuaded to go back to her matrimonial house. The informant has alleged that at around 08-30 p.m. on 13.11.2022, he was informed by the accused no. 1, Md. Ahijul Islam [A-1] over phone that Sajeda Khatun had consumed poison and the other accused persons had taken her to a health facility at Dhekiajuli. When the informant reached CHC, Dhekiajuli, he found his daughter dead and suspected that the accused persons by administering poison to his daughter, had killed her.

5. The learned Additional Public Prosecutor has produced the case diary and has submitted that the final opinion regarding cause of death of the deceased is kept pending in the post-mortem examination report awaiting the chemical analysis report of viscera from the Forensic Science Laboratory [FSL], Assam.

6. From the materials in the case diary, collected during the course of investigation carried out so far, it has emerged that there were constant quarrel between the deceased and her husband [accused no. 1] and the husband [accused no. 1] used to assault her physically. The statements of the witnesses recorded under Section 161, CrPC which are available in the case diary, have not specifically indicated about torture from the ends of the present two accused-petitioners, who were the mother-in-law and the brother-in-law respectively of the deceased. The materials in the case diary go to show that the investigation of the case is still in progress.

7. Having regard to the nature of materials available in the case diary so far as the two accused-petitioners are concerned and the period of their detention for 65 days since 15.11.2022, this Court is of the considered view that further custodial detention of the accused-petitioners are not necessary for the purpose of carrying out further investigation of the case and their release on bail, at this stage of investigation, is unlikely to cause any adverse effect in the further investigation of the case, provided they continue to extend their assistance and co-operation in the further investigation of the case.

8. Accordingly, it is directed that the accused-petitioners shall be released on bail on furnishing a bail bond of Rs. 50,000/- each with one local surety each of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Sonitpur, Tezpur subject to the conditions that :-

- [i] the accused-petitioners shall co-operate with the investigation and make themselves available for interrogation whenever required by the Investigating Officer [I.O.] of the case;
- [ii] the accused-petitioners 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 them from disclosing such facts to the court or to any police officer;
- [iii] the accused-petitioners 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;

[iv] the accused-petitioners shall maintain law and order and they shall not commit an offence similar to the offence of which they are accused, or of the commission of which they are suspected; and

[v] the accused-petitioners shall regularly remain present during the trial and cooperate the Court to complete the trial for the above offences, if charge sheeted in the case.

9. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant