

GAHC010267732022



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

Case No. : Bail Appln./3647/2022

UPENDRA BARUAH AND ANR
S/O DHONI RAM BARUAH
R/O VILL- NO. 1 KALAIGAON P.S. KALAIGAON, DIST. UDALGURI, ASSAM

2: HIROKJYOTI BARUAH
S/O UPENDRA BARUAH
R/O VILL-NO. 1 KALAIGAON
P.S. KALAIGAON
DIST. UDALGURI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D K BAIDYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

25.04.2023

Heard Mr. A.M. Bora, learned Senior counsel assisted by Mr. D.K. Baidya, learned counsel for the accused-petitioners and Mr. R.R. Kaushik, learned Addl.

Public Prosecutor, Assam for the State.

2. This bail application has been filed by the accused-petitioners namely, Upendra Baruah and Hirokjoyti Baruah, seeking bail as they have been arrested in connection with Kalaigaon P.S. Case No. 65/2020 under Sections 376/302/201 of the IPC. Subsequently, Section 120B of the IPC was also added. The accused-petitioners have been in custody since their date of arrest except for a short period when they were on interim bail. Charge-sheet in the matter has been filed. The petitioner are now on facing trial in connection with Sessions Case No. 12/2020 under Sections 120B/302326A/201/34 of the IPC which is pending before the Court of Sessions Judge, Udalguri.

3. The scanned copy of the LCR as called for has been received.

4. Upon perusal of the LCR, it is seen that the facts as noted from the case records are that the wife of the petitioner No. 1 and the mother of the petitioner No. 2 was initially found missing from their house on 06.07.2020. The very next day, however, her body was recovered from the premises of a private school namely, UN Academy. There were severe burns caused on her face and other parts of the body by acid and her wearing appeals were also found to be torn out and her body exposed from waist below.

5. The FIR was lodged on 07.07.2020 by the informant one Dr. Sachindra Saharia who is the brother of the deceased woman. Allegations were made in the FIR that it was not suicide but a pre-planned murder and it also appears that the deceased was brutally raped. Pursuant to the investigation the four persons were arrested namely:- 1. Upendra Baruah, 2. Hirokjoyti Baruah, 3. Jasoda Rabha and 4. Md. Nawaji Hussain.

6. It is submitted by the learned Senior counsel for the accused-petitioners that the petitioners are completely innocent and have been victimized. It is submitted that there are no eye witnesses to the offence alleged. The petitioners have been arrested solely on the statement made by the co-accused Jasoda Rabha. The learned Sr. Counsel has strenuously urged that there is no evidence which has come out during the trial which implicates the petitioners. Solely on the statements made by the co-accused Jashoda Rabha, the petitioners have been arrested. The entire prosecution case rests on the confession/statements under Section 164 Cr.P.C. made by the Co-accused Jasoda Rabha which is contrary to the well established principles laid down by the Apex Court in respect of trial being conducted only on the statements made by a co-accused. The learned counsel for the petitioners submits that as on date out of 58 prosecution witnesses, 37 have been examined and none of the witnesses have implicated the petitioners except the co-accused Jasoda Rabha. Therefore, the only case of the prosecution against the petitioners is based upon the statement of co-accused Jasoda Rabha. The learned counsel for the petitioners submits that the petitioner No. 1 is undergoing serious health issues and he is suffering from suspected cancer and is in need of urgent medical help. It is further submitted that the petitioner No. 2 is a young boy of about 24 years. It is further submitted that Sessions Court, Udalguri vide order dated 06.05.2021 had granted interim bail to the petitioners to attend the Shraddha Ceremony of the father of petitioner No. 1 and the Grand Father of petitioner No. 2 for a period of 15 days with effect from 07.05.2021. Both the accused persons were allowed to go on interim bail of Rs. 25,000/- each with suitable surety of like amount and they were directed to surrender before the Court positively on 21.05.2021. The learned Senior Counsel for the petitioners submits

that one of the co-accused namely, Md. Nawaji Hussain has been released on bail by an order of this Court vide order dated 13.12.2022 passed in B.A. No. 2206/2022. Accordingly, it is submitted that the petitioners have been in custody for about 896 days leaving aside the period during which the petitioners were granting interim bail.

7. The learned Addl. Public Prosecutor on the other hand submits that the allegations against the petitioners are serious and the trial is continuing. As many as 37 witnesses have been examined out of 58 prosecution witnesses and therefore, at this stage if the petitioners are released on bail, it may affect the trial which has been carried on before the Sessions Judge, Udalguri. He, therefore, submits that the petitioners should not be granted bail and the bail application should be rejected.

8. The learned counsels for the parties have been heard. The bail application has been perused. The scanned copy of the LCR called for by the Court of Sessions Judge, Udalguri has also been carefully perused.

9. It is seen that the trial is presently under way before the Court of Sessions Judge, Udalguri. The allegations made against the petitioners are grave and very serious.

10. Upon due perusal of the evidences adduced before the Court, at this stage it cannot be said conclusively that the entire case of the prosecutions rests solely on the confessional statement of co-accused. Out of 58 listed prosecution witnesses, 37 has already been examined and the remaining witnesses are left to be examined. The post mortem report reveals that death is due to asphyxia because of the damage of upper respiratory tract at the neck due to acid like

chemical and strangulation with cloth. All injuries are shown to be ante mortem and homicidal in nature. Although, it is contended that the petitioners were on bail for four months and had surrendered before the trial Court on 04.09.2021. However, from the order dated 03.09.2011 passed by the learned Sessions Court in Sessions Case No. 12/2020, it is seen that though interim bail was granted for 15 (fifteen) days, the accused persons did not surrender before the Court after the end of 15 (fifteen) days. Subsequently, this Court had extended the interim orders of the Subordinate Court by virtue of passing orders in connection with PIL(Suo Moto) No. 3/2021.

11. Upon due consideration of the entire matter as well as the materials available from the scanned copy of the LCR as called for, considering the gravity of the offences alleged and the punishments prescribed under the statute in the event of their conviction of the alleged offences and also in view of the fact that at this stage, it will not be prudent to test the veracity of the evidences adduced as is available on record. The order of release of the co-accused by the co-ordinate Bench of this Court appears to have been granted taking note of the statements made by the learned Addl. Public Prosecutor in that case. However, in this bail petition, the learned Addl. PP has objected to grant of bail.

12. Considering the matter in its entirety and also taking note of the findings recorded by the Sessions Court in its order dated 03.09.2021 that the petitioner did not surrender before the Court after expiry of the interim bail granted and also considering that the trial is being proceeded with by the Sessions Court, this Court is of the view that the prayer for bail by the petitioners at this stage ought not to be granted.

13. The bail petition is accordingly rejected.

14. The learned Sessions Court, Udalguri is requested to expedite the examination of the remaining witnesses as well as trial proceedings. The Sessions Court, Udalguri will also look into the prayers made by the petitioner No. 1 with regard to his health conditions and requirement of adequate and appropriate medical facilities. The Sessions Court, Udalguri is requested to ensure that such medical treatment if found to be required to the petitioner No. 1 be directed to be provided.

JUDGE

Comparing Assistant