

GAHC010269392022



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

Case No. : Bail Appln./3666/2022

JAHAN UDDIN MIA @ JAHAN UDDIN
S/O LATE RAHMAN MIA,
R/O DOMKAL MUSLIMPARA,
P.S.- DOMKAL,
DIST.- MURSHIDABAD (WEST BENGAL)

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR H R A CHOUDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER

20.01.2023

Heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. A. Ahmed, learned counsel for the accused-petitioner in B.A. no. 3664/2022 as well as for the accused-petitioner in B.A. no. 3666/2022; and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By the application, B.A. B.A. no. 3664/2022 under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Rup Khan @ Rupa Khan has prayed for his release on bail in connection with Barpeta Police Station Case no. 1101/2022, registered under Sections 120B/364/302/201, Indian Penal Code [IPC].

2.1. By the application, B.A. no. 3666/2022 under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Jahan Uddin Mia @ Jahan Uddin has prayed for his release on bail in connection with same case, that is, Barpeta Police Station Case no. 1101/2022.

3. Both the accused-petitioners were arrested and produced before the Court of learned Chief Judicial Magistrate, Barpeta on 12.11.2022 and on being so produced, they were remanded to custody.

4. In the First Information Report [FIR], lodged on 10.11.2022, the informant has arraigned three persons – [i] Jahan Uddin Mia [A-1] i.e. the accused-petitioner in B.A. no. 3666/2022; [ii] Fakaruddin Dewan [A-2]; and [iii] Rafiqul Islam [A-3] – as accused along with others. The informant has mentioned that the accused-petitioner in B.A. no. 3666/2022, Jahan Uddin Mia who is her husband, after physically assaulting her, drive her out of the matrimonial house and as a result, the informant had to take shelter in her paternal house. Since thereafter, her husband with the assistance of A-2 and A-3, had been causing harassments in different manner with a threat to kill the informant and the other members of her family. It was around 03-00/04-00 p.m. on 17.10.2022, the informant's mother, Hasina Khatun went missing from near the Court premises at Barpeta and a missing report to that effect was lodged at Barpeta Police Station. It was at about 12-30 p.m. on 09.11.2022, the deadbody of the informant's mother, Hasina Khatun was recovered from a place by the police personnel from Barpeta Police Station. The informant suspected involvement of the three accused-petitioners named in the FIR.

5. Mr. Choudhury, learned senior counsel appearing for the accused-petitioners has submitted that there was considerable delay in lodging the FIR on 10.11.2022 after the informant's mother went missing on 17.10.2022. The informant had merely suspected the involvement of the accused-petitioner in B.A. no. 3666/2022, Jahan Uddin Mia @ Jahan Uddin behind the death of her mother without any basis. The relationship between the accused-petitioner in B.A. no. 3666/2022, Jahan Uddin Mia @ Jahan Uddin and the informant was

strained as the informant had left the matrimonial house about 10 months earlier along with her four children on her own and since then, the informant has been making various allegations against the accused-petitioner. There is no mention in the FIR regarding the details of the missing report, claimed to have submitted by the informant. Moreover, the accused-petitioner in B.A. no. 3664/2022 is not named in the FIR and as such, his arrest in connection with the case is absolutely without any basis.

6. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, by referring to the materials in the case diary, has submitted that there are ample incriminating materials against the two accused-petitioners herein. As the investigation of the case is still in progress, the release of the accused-petitioners at this vital stage of investigation is likely to cause prejudice to the ongoing investigation.

7. I have perused the materials in the case diary, collected during the course of investigation carried out so far.

8. The Post-Mortem Examination [PME] on the deadbody of the deceased, Hasina Khatun was performed on 09.11.2022 at the Fakaruddin Ali Ahmed Medical College & Hospital [FAAMCH], Barpeta. As per the PME Report, the female deadbody was in a decomposed state with onset of adipocere in some parts of the body. A black dupatta was found tied tightly around the neck with the nape [ligature material]. On removal of the ligature material, a ligature mark of size 26 cm X 3 cm was present transversely around the neck, at the level of the thyroid cartilage. Thyroid cartilage and cricoids cartilage were found to be fractured. In the PME Report, the opinion regarding cause of death is kept pending until the receipt of the Chemical Analysis Report from the Directorate of Forensic Science, Guwahati. The PME Report has, however, reported that the death had occurred around about 3-4 weeks earlier.

8.1. The statements of a number of witnesses have been recorded under Section 164, CrPC apart from the statements of other witnesses under Section 161, CrPC. The statements of the two accused-petitioners recorded by the Investigating Officer [I.O.] of the case are also available in the record. From the materials on record and the statement of owner of a vehicle

[Alto], it has emerged that the accused-petitioner in B.A. no. 3664/2022 viz. Rup Khan @ Rupa Khan hired the vehicle [Alto] from the said owner on 17.10.2022 i.e. the date since when the deceased went missing, and the vehicle [Alto] was returned after the day. In their statements, the accused-petitioners depicted about how the alleged crime was committed on 17.10.2022. There are sufficient incriminating materials in the case diary against the two accused-petitioners which go to show that the accused-petitioner in B.A. no. 3666/2022, Jahan Uddin Mia @ Jahan Uddin had grudges against the informant and her family members, more particularly, the deceased. *Prima facie*, the presence of motive for this accused-petitioner cannot be ruled out, at this stage of investigation, which is still in progress. A part of the case is also based on circumstantial evidence. From the materials in the case diary, it has, *prima facie*, emerged that the services of the accused-petitioner in B.A. no. 3664/2022 viz. Rup Khan @ Rupa Khan was availed by the accused-petitioner in B.A. no. 3666/2022, Jahan Uddin Mia @ Jahan Uddin in order to get friendly with the deceased first by calling her, followed by personal interaction. Further dilation as regards other incriminating materials, available in the case diary, is not necessary as the incriminating materials, collected up to this stage, which strongly suggestive of the fact that the two accused-petitioners were involved in the act of missing and subsequent death of the deceased.

9. Having regard to the availability of ample incriminating materials in the case diary, this Court is of the considered view that the release of the two accused-petitioners – Rup Khan @ Rupa Khan in B.A. no. 3664/2022 and Jahan Uddin Mia @ Jahan Uddin in B.A. no. 3666/2022 – at this vital stage of investigation, is likely to affect the further investigation of the case in an adverse manner and in such view of the matter, this court is not inclined to allow the prayers for bail made by the two accused-petitioners. Consequently, the two bail applications are rejected.

10. The case diary be returned forthwith.

JUDGE

Comparing Assistant