

GAHC010269692022



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

Case No. : AB/3849/2022

ARUP DAS @ ARUP KUMAR DAS AND ANR
S/O- DIPAK DAS ,VILL- BARAPETA,
P.S- GOBARDHANA, DIST- BARPETA, ASSAM

2: ROHITA DAS
W/O- DIPAK DAS VILL- BARAPETA
P.S- GOBARDHANA DIST- BARPETA ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. A R SIKDAR
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER

03.01.2023

Heard Mr. A.R. Sikdar, learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. 1) Arup Das @ Arup Kumar Das, and 2) Smt. Rohita Das have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Gobardhana Police Station Case no. 121/2022, registered under Sections 120B/302, Indian Penal Code [IPC] for the second occasion after rejection of their earlier bail application, A.B.

no. 2218/2022 & A.B. no. 3384/2022. In A.B. no. 3318/2022, the petitioner no. 1 herein was the sole petitioner and In A.B. no. 3384/2022, the petitioner no. 2 herein was the petitioner no. 2.

3. At the inception, Mr. Sikdar, learned counsel for the petitioners has submitted that after institution of the instant application, the petitioner no. 1 has been arrested and remanded to custody. Therefore, he is not pressing the pre-arrest bail prayer in respect of the petitioner no. 1.

4. The First Information Report [FIR] in Gobardhana Case no. 121/2022 is lodged by one Sri Dimpal Das on 13.09.2022. The informant, Dimpal Das is the elder brother of the deceased, Pallabi Das. The petitioner no. 1 herein was the husband of the deceased whereas the petitioner no. 2 herein was the mother in-law of the deceased. As per the FIR, the marriage between the deceased and the petitioner no. 1 was solemnized on 20.12.2019. Out of the wedlock, one child was born to them in February, 2022. Since after the birth of the baby, the deceased person's in-laws' family members started inflicting physical torture upon the deceased. Around 20 days prior to the FIR, the deceased had to return to her paternal house failing to bear the torture. The informant after persuading her, sent his sister back to her in-laws' house. But at around 03-00 a.m. on 12.09.2022, the informant was informed that the deceased had expired. Suspecting the death of the deceased as a case of murder at the instance of the members of her in-laws family, the informant has lodged the FIR.

5. The bail application, A.B. no. 3318/2022 came up for consideration on 13.12.2022 and the learned Additional Public Prosecutor had produced the concerned case diary on that date. Upon perusal of the nature of incriminating materials against the two petitioners herein in the case diary, this Court did not extend the benefit of pre-arrest bail under Section 438, CrPC to them while extending the benefit of pre-arrest bail under Section 438, CrPC to the petitioner no. 1 and the petitioner no. 3 in A.B. no. 3384/2022 viz. [i] Sri Dipak Das @ Sri Dipak Kumar Das, the father-in-law of the deceased, and [ii] Sri Anil Das, the brother-in-law of the deceased. The relevant excerpt of the order dated 13.12.2022 reads as under :-

“8. The post-mortem examination on the body of the deceased was conducted on 13.09.2022. As per the Post-Mortem Examination [PME] Report, the death of the deceased was due to asphyxia following hanging which was ante mortem in nature. Both the Inquest and the PME Report have indicated about existence of ligature mark on the neck of the deceased.

9. I have perused the materials available in the case diary including the statements of the witnesses recorded under Sections 164, CrPC and under Section 161, CrPC. The family members of the deceased have stated that the deceased was driven out of her matrimonial house about 20 days prior to her death. It was the family members of the deceased who had persuaded her to return back to her matrimonial house once again with the consolation that the relationship might improve in course of time. The deceased had however, expressed serious apprehension that something fatal might happen to her. The deceased had, on earlier occasions, showed injury marks, inflicted on her body, to her family members. The materials in the case diary also go to indicate that there used to be frequent mental and physical tortures on the deceased at the house of the in-laws. The materials in the case diary also go to indicate that the petitioners are found absconding despite repeated searches were made in the house of the petitioners. On closer examination of the statement of the witnesses, it is found that the acts of inflicting continuous physical and mental torture are more pointed towards the husband of the deceased and the mother-in-law of the deceased which might have compelled the deceased to take the final decision to end her life. The death of the deceased was not a normal death.

10. Having regard to such incriminating materials found available in the case diary, I am not persuaded to extend the privilege of pre-arrest bail under Section 438, CrPC to the husband of the deceased i.e. the petitioner in A.B. no. 3318/2022 and the mother-in-law of the deceased i.e. the petitioner no. 2 in A.B. no. 3384/2022. Accordingly, the prayer for pre-arrest bail for the petitioner [Arup Das @ Arup Kumar Das] in A.B. no. 3318/2022 and the petitioner no. 2 [Smt. Rohita Das] in A.B. no. 3384/2022 are rejected.

11. Having perused the nature of allegations made and the materials collected during the course of investigation carried out so far, as found available in the case diary, against the petitioner no. 1 and the petitioner no. 3 in A.B. no. 3384/2022, this Court is of the considered view that custodial interrogation of the petitioner no. 1 [Sri Dipak

Das @ Sri Dipak Kumar Das] and the petitioner no. 3 [Sri Anil Das] in A.B. no. 3384/2022 for the purpose of carrying out further investigation of the case do not appear to be necessary and their release on pre-arrest bail, at this stage of investigation, is not likely to bring any adverse effect in the further investigation of the case, provided the said two petitioners extend their assistance and co-operation in the further investigation of the case.”

6. The only ground urged by the learned counsel for the petitioner no. 2 in this bail application is that the deceased had left behind the minor child of 10 months who is suffering from ailment due to lack of hemoglobin requiring urgent medical attention. As the petitioner no. 2 is the grandmother of the child, her presence at the residence to take care of the medical needs of the child is indispensable.

7. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 13.12.2022 passed in A.B. no. 3318/2022.

8. By the order dated 13.12.2022, this Court had already extended the benefit of pre-arrest bail to the grandfather and the uncle of the child. The prayer for pre-arrest bail in respect of the petitioner no. 2 was rejected finding ample incriminating materials against her in the events which led to the death of the deceased. In such view of the matter, this Court is not persuaded to extend the benefit of pre-arrest bail to the petitioner no. 2 in the given facts and circumstances obtaining in the case. As the instant bail application lacks merit, the same stands rejected.

JUDGE

Comparing Assistant