

GAHC010271152022



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

Case No. : Bail Appln./3679/2022

MD. SAMSULLAH KHAN AND ANR.
S/O MD. AMIR KHAN,
R/O BOIRAGIMOTH, NIZKADOMONI, MALAKHUBASA,
P.S.- DIBRUGARH, ASSAM, PIN- 786001.

2: MD. BAIDULLAH KHAN
S/O MD. AMIR KHAN

R/O BOIRAGIMOTH
NIZKADOMONI

P.S.- DIBRUGARH
ASSAM
PIN- 786001

VERSUS

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

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 09-02-2023

Heard Mr. B.K. Mahajan, learned counsel for the petitioners. Also heard Ms. R.J. Baruah, the learned Addl. P.P. for the State.

2. The petitioners, namely, (1) Md. Samsullah Khan, arrested on 08.07.2022, and (2) Md. Baidullah Khan, arrested on 09.07.2022 in connection with Dibrugarh P.S. Case No. 390/2022 under sections 306/34 IPC with added sections 120B/307 IPC, are seeking regular bail under section 439 IPC.

3. The learned counsel for the petitioner has submitted that as no injury was caused to the deceased or to any of the family members in the alleged attack made on their house on 04.07.2022 and that the deceased had committed suicide on 07.07.2022, which had no proximity to the alleged attack, the ingredients of section 307 IPC was not attracted and therefore, considering the length of detention, the petitioners be released on bail. In support of his submissions, the learned counsel for the petitioners has relied on the following cases, viz., (1) *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67, (ii) *Shabbir Hussain v. State of Madhya Pradesh*, 2021 SCC OnLine SC 743, (iii) *Sanju @ Sanjay Singh Sengar v. State of M.P.*, (2002) 5 SCC 371, (iv) *Sagayam v. State of Karnataka*, (2000) 4 SCC 454, (v) *Dr. Stephen Mavelly v. The State of Assam*, BA 1204/2022, decided by this Court on 26.05.2022, (vi) *Hukum Singh Yadav & Anr. vs. State of M.P.*, 2011 SCC OnLine MP 2244.

4. As charge-sheet has been submitted in the aforesaid case, and the case is tried as Sessions Case No. 349/2022 before the learned Court of Sessions Judge, Dibrugarh, the scanned copy of the charge-sheet has been called for and received from the said learned Court. The learned Addl. P.P. has perused the same and has opposed the prayer for bail.

5. In this case, charge-sheet has been submitted by the I.O. on 01.09.2022, i.e. within the time stipulated under section 167(2) CrPC. The petitioners are in custody for about 216 and 215 days respectively.

6. On a perusal of the case diary, it appears that the deceased victim and his family were first attacked on 30.06.2022, and they somehow saved their lives. Another co-accused was threatening to kill the deceased and to kidnap his minor daughter. FIR to that effect was lodged with the police, but prompt action was taken. On 04.07.2022, the victim and their family were attacked by the petitioners along with others by entering into their premises, but when neighbours came, they had fled away. An FIR was lodged on 05.07.2022, but again, no prompt action was taken. Thus, it is projected in the case diary that because of continued threat of attack and threat of his minor daughter being kidnapped and raped, the victim committed suicide on 07.07.2022. However, after recording his statement in a mobile video clip. Therefore, the Court finds that the ingredients of the victim being continuously harassed and terrorized are very much present in the case diary.

7. Coming to the submissions that the ingredients of offence committed under section 306 and 307 IPC is not present, the Court finds that this is not a case of solitary verbal, abuse or assault, but although no physical harm was caused to the deceased victim, but he and his family were terrorized with a view to evict them from the suit premises. Therefore, on facts, the cases cited by the learned counsel for the petitioner is distinguishable on facts.

8. It cannot be discounted that when two FIRs were lodged in close proximity on 01.07.2022, and 05.07.2022, but the police did not take prompt steps, the deceased cannot be said to be terrorized by the petitioners.

Each case has to be scrutinized on the basis of facts in which the case is presented. As mentioned herein before, the case diary has sufficient materials to indicate that the attack made on 04.07.2022 at the premises of the deceased victim was not a solitary or stray incident.

9. In the case of *Hukam Singh Yadav (supra)*, the deceased while going with his father to farm was restrained and slapped and later on, the victim committed suicide. Thus, it was a solitary incident. In the case of *Sanju @ Sanjay Singh Sengar (supra)*, the accused had said abusive words to the deceased on 25.07.1998 and she committed suicide on 27.07.2022, which was held to be not proximate to the use of abusive words. In the said case, the victim was perhaps not terrorized as in the present case in hand. In the case of *Shabbir Hussain (supra)*, the nature of harassment to the victim is not narrated. However, in the present case in hand, it is not a case of solitary harassment, but this is a case where the victim felt terrorized, and he had lodged two FIRs in close proximity to the date of his suicide. In the case of *Dr. Stephen Mavelly (supra)*, the accused was the Vice Chancellor of a University and therefore, as an outside person committed suicide, without any active role of the accused, bail granted to the accused cannot be faulted with, but this is not the facts of the case in hand.

10. Even in the case of *Sagayam (supra)*, the incident was a solitary one. Para-6 thereof is quoted below:-

6. *To justify conviction under this Section under S.307, IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous*

intervention which frustrated its consummation. There are different stages in a crime. First intention to commit it; second preparation to commit it; third an attempt to commit it. If at the third stage, the attempt falls, the crime is not complete but law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission.

11. In the present case, the intent to commit the crime cannot be ruled out because of two successive attempts in close proximity.

12. Under the aforesaid circumstances, as there are sufficient materials against the petitioners in the case diary, the Court is not inclined to release the petitioners on bail at this stage.

13. As per the decision of the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51*, an under-trial prisoner can be kept in detention for a period extending to one-half of the maximum period of imprisonment specified for the offence.

14. Accordingly, the prayer of the petitioners, namely, (1) Md. Samsullah Khan, and (2) Md. Baidullah Khan for bail in connection with Sessions Case No. 349/2022 arising out of Dibrugarh P.S. Case No. 390/2022 is refused at this stage.

15. This application is disposed of.

16. Registry shall not issue copy (certified/un-certified) of any part of the scanned case diary.

JUDGE

Comparing Assistant