

GAHC010271432022



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

Case No. : Bail Appln./1/2023

NUR HOSSEN
S/O ABDUR RAZZAK @ ABDUR REZZAK,
VILL.- NALANGA SINGIMARI,
P.S.- BAGUAN,
P.O.- SIMLABARI,
DIST.- GOALPARA, ASSAM, PIN- 783101.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M H TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

20.01.2023

Mr. M.H. Talukdar, learned counsel for the accused-petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam are present.

2. By this application under Section 439, Code of Criminal Procedure, 1973, the accused-petitioner viz. Nur Hossen has prayed for his release on bail in connection with Baguan Police Station Case no. 92/2021, registered for offence under Section 302, Indian Penal Code [IPC].

3. The First Information Report [FIR] was instituted on 28.10.2021. As per the FIR, the daughter of the informant went missing from around 03-00 p.m. on 23.10.2021 when she was working in a garden near the house of the informant. At around 07-00 a.m. on 28.10.2021, the deadbody of the informant's daughter was found at a distance of about 1 K.M. from the informant's house inside a garden. The informant has alleged that some unknown miscreant after killing her daughter, had left the deadbody there.

4. In the course of investigation, the accused-petitioner was arrested and produced before the Court of learned Judicial Magistrate, 1st Class, Goalpara on 04.11.2022 and on being so produced, he was remanded to custody.

5. The learned Additional Public Prosecutor has produced the case diary.

6. From the materials in the case diary, collected during the course of investigation, carried out so far, it has emerged that the accused-petitioner is known to the family of the informant. The accused-petitioner has himself stated that he used to visit the village of the informant frequently for business purpose as he used to procure and buy betel nut from the villagers in order to sell them in the market. The accused-petitioner has averred that he used to know the informant and the victim but there was no enmity between him and the informant's family and as such, there could not be any reason or motive for him to commit the alleged crime.

6.1. The materials in the case diary include statement of few of the witnesses recorded under Section 161, CrPC, which go to show that the accused-petitioner was looking for some medicine which could cause death to a person consuming it. The Post-Mortem Examination [PME] on the deadbody of the deceased was performed on 29.10.2021 at the Civil Hospital, Goalpara. As per the PME Report, the opinion regarding cause of death is kept

pending till the receipt of chemical analysis report of viscera. As per the PME Report, the approximate time of death was 5-7 days from 29.10.2021. On perusal of such materials in the case diary, it has emerged that apart from the fact that the accused-petitioner was looking for a medicine from a number of persons which could cause death to the person consuming it, there are no *prima facie* materials to directly connect the accused-petitioner with the crime. The Forensic Science Laboratory [FSL] Report is still awaited. The materials in the case diary are not suggestive of any reason or motive available to the accused-petitioner for causing death to the deceased.

7. Taking consideration of all the facts and circumstances above, this Court is of the considered view that further custodial detention of the accused-petitioner who is in incarceration for 77 days since 04.11.2022, is not necessary for the purpose of carrying out further investigation of the case and his release on bail, at this stage of investigation, is unlikely to cause any adverse effect in the further investigation of the case, provided he continues to extend his assistance and co-operation in the further investigation of the case.

8. Accordingly, it is directed that the accused-petitioner shall be released on bail on furnishing a bail bond of Rs. 50,000/- with one local surety of the like amount to the satisfaction of the learned Judicial Magistrate, 1st Class, Goalpara, subject to the following conditions :-

- [i] the accused-petitioner shall co-operate with the investigation and make himself available for interrogation whenever required by the Investigating Officer [I.O.] of the case;
- [ii] the accused-petitioner 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 him from disclosing such facts to the court or to any police officer;
- [iii] the accused-petitioner 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-petitioner shall maintain law and order and he shall not commit an offence similar to the offence of which he is accused, or of the commission of which

he is suspected; and

[v] the accused-petitioner shall regularly remain present during the trial and co-operate 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.
10. The case diary be returned forthwith.

JUDGE

Comparing Assistant