

GAHC020004912023



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

Case No. : Bail Appln./17/2023

CHUJANGMONGBA
S/O SHRI TATONGNIKEN,
YIMLANG SECTOR, CHUNGTIA VILLAGE,
PO/PS MOKOKCHUNG P.S II,
DISTRICT MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND
NAGALAND

Advocate for the Petitioner : A. SOPHIE

Advocate for the Respondent : S. MERE, PUBLIC PROSECUTOR, NAGALAND

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

31.10.2023

Heard Mr. A. Sophie, learned counsel appearing on behalf of the petitioners as well as Ms. S. Mere, learned Public Prosecutor, Nagaland.

2. The petitioner filed this bail application under Section 439 of the Code of Criminal Procedure, 1973 praying for release of 5 (five)

the accused persons namely Chepdakmayang (A3), Bendangsunep (A5), Imtizachet (A7), Lipoktemsusu (A8) and Temsuakum (A9). The above accused persons have been arrested and detained behind the bar in connection with GR Case No. 34/2023 corresponding to Mokokchung Police Station-II Case No. 13/2023 under Section 120B/341/365/302 of the Indian Penal Code. The petitioner prays for release of the accused persons on the following grounds:

- i. That as per the charge-sheet submitted by the Investigation Officer of the case, the accused persons namely Chepdakmayang (A3), Bendangsunep (A5), Imtizachet (A7), Lipoktemsusu (A8) and Temsuakum (A9) were not present at the location where the murder took place and that there is no evidence to show that the present accused persons even came in physical contact with the deceased. However, the Investigating Officer has submitted his charge-sheet against the present accused persons on the basis of mere suspicion and solely basing on the statement of the present accused persons without any corroborative evidence and as such there is no prima facie case established against the present accused persons.*
- ii. That the Investigating Officer has impleaded the present accused persons in the instant case, merely on the allegation that the present accused persons were present within the vicinity of the crime scene, without any direct, concrete or cogent evidence. Further the sole eye witness (star witness) namely Shri Pokyimba, the driver of the A-Star car, who was with the deceased during the entire episode*

have failed to identify even a single accused person who attacked them on that day.

iii. That the charge-sheet has already been filed by the Investigating Officer, solely based on the statements made by the accused and co-accused before the Investigating Officer and the same is inadmissible in evidence. That, the statements given by the accused persons does not affect or incriminate themselves to the murder of the deceased. Further, as the charge-sheet has already been filed there is no probability for the accused persons to tamper or hamper with the evidence of the prosecution.

3. The brief facts of the case is that on 21.02.2023, one Dr. Meyachungla lodged a missing report before the Officer-in-Charge of Police Station-II, Mokokchung, *stating therein* that her younger brother Mr. Imkongjiba Kichu, who while returning back after attending a funeral at Chungtia Yimsen was ambushed and abducted by some miscreants at a place in between Satier and New Camp at about 5:00 PM on 21.02.2023 and thereafter no news have been received till the lodging of the FIR and hence, requested for help in finding her brother. However, on 22.02.2023, the dead body of the deceased was recovered at Satier area. The investigation was then initiated and during the course of investigation altogether 9 accused persons including the present five accused persons were arrested on different dates during February and March, 2023. And after completion of the investigation, and on finding prima facie case against them, the Investigating Officer of the case laid charge-sheet against all the 9 (nine) accused persons including the present

five accused persons for commission of offence under Sections 120B/341/365/302 IPC.

4. The learned counsel for the petitioner submits that earlier, all the accused persons had moved bail applications before the learned court of the Sessions Judge, Mokokchung under Section 439 read with section 167 of the code of Criminal Procedure, 1973 (for short Cr.P.C). The bail applications were registered as I.A. No. 15/23 to 23/2023, however, the said bail applications were rejected by a common order dated 08.06.2023. Thereafter, the petitioner had moved a subsequent bail application before the learned Sessions Court again being registered and numbered as I.A. No. 32/2023 to 37/2023. But the said bail applications were also dismissed by a common order dated 28.07.2023. Hence, this bail application for release of the accused persons *inter alia* on the ground that there is no *prima facie* case against the accused persons; no direct or concrete evidence against the accused persons and the charge sheet has been filed by the Investigation Officer of the case merely basing on the statement of the accused persons.

5. Per contra, the learned Public Prosecutor submits that in the instant case all the accused persons along with other co-accused persons had conspired and with an evil intention made a detailed plan to commit the alleged offence due to political and other rivalry; and the said plan was well executed by all the accused persons on 21.02.2023. And as disclosed by the accused persons themselves, at the time of executing the crime, they had their face covered with masks/scarves and monkey caps to conceal their identity. She further submits that during the investigation the CDR analysis

reveals that both the victims and all the arrested accused persons were at the scene of crime as indicated by tower locations on incident day on 21.02.2023. The said analysis proves that the confessions made by the accused persons before the SIT team about their frequent mobile contacts among the accused persons prior to the commission of the crime, during the commission of the crime and after the commission of the crime. The independent witnesses too corroborate with the CDR analysis report. And after thorough investigation, the Investigating Officer found *prima facie* case against them for their involvement in the commission of the alleged offence and hence, submitted charge-sheet against them for the alleged offence. Thus, the learned Public Prosecutor submits that there is clear evidence that the present accused persons are involved in the crime; and hence, prays for dismissal of the present bail application.

8. The learned public prosecutor further submits that during the pendency of this bail application, on 13.10.2023, the learned Sessions Court found *prima facie* sufficient material against all the accused persons and after hearing both the parties, framed a charge against all the accused persons including the present five accused persons for commission of offence under Section 120B/341/325/302 IPC.

9. Heard both the learned counsels for the parties. I have also carefully perused the scanned copy of the case records.

10. Upon hearing the parties and on perusal of the records, and considering the alleged role played by each one of the accused

persons and the material found against them on record, and also considering the nature and gravity of the offences alleged against them and the seriousness and impact of the case in the peaceful society, I am not inclined to interfere with the trial of the case by allowing this bail application at this stage. Accordingly, this bail application for release of the above five accused persons is rejected.

11. This bail application stands disposed of.

Sd/-
JUDGE

Comparing Assistant