

GAHC040002912024



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

Case No. : BA/21/2024

Gemin Ete
Son of Shri Lige Ete, a permanent resident of Wak Village, PO and PS Aalo, West
Siang District, Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Kemo Lollen

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 20.03.2024

Heard Mr. K. Lollen, learned counsel for the applicant. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State and Ms. R. Taku, learned counsel for the informant, who has assisted the learned Additional Public Prosecutor.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of post arrest bail to the accused, namely, Mrs. Gerik Ete Lollen, who was arrested on 06.12.2023 in connection with Aalo P.S. Case No. 74/2023, under Sections 302/120B/506/34 of the Indian Penal Code and presently in jail for the last 104 days.

3. The case of the petitioner, in brief, is that the present accused was married to one Shri Toni Lollen, the main accused, in the year 2006. However, due to illicit affairs of her husband, she had separated from him in the month of June, 2016 and thereafter she shifted to a rented house with her son as she is serving as MTS at Govt. Middle School, Hikar Gumin.

4. On 05.12.2023, one Smti Yari Ruchi lodged an F.I.R. stating that her deceased daughter had married to one Shri Toni Lollen (main accused) in the year 2020 and started living together and after few months of marriage, the co-accused Toni Lollen started torturing her deceased daughter and on many occasions, the matter was resolved amicably. It is alleged that on 04.12.2023, the elder sister of the deceased received a phone call from the deceased informing that the first wife of Toni Lollen has arrived at her residence and forcefully asked the deceased to vacate the house otherwise the deceased will face dire consequences. Thereafter, the elder sister of Toni Lollen has also verbally warned her that she would also come to her residence and forcefully remove her from residence. The first son of the main accused Toni Lollen has also warned the deceased not to give birth to any male child as it would divide his share in property and if any male child is born, he will kill him. It is also stated that the first wife of Toni Lollen had made a call to the elder brother of

deceased and warned that he must take back his sister from the residence of Toni Lollen otherwise she would face dire consequences. At around 7.30 p.m., the deceased made a call to her brother informing that Toni Lollen had started brutal assault on her and she is injured badly and upon hearing that, the elder brother of the deceased advised her not to escalate the matter further and he will come on the next day to solve the matter amicably. Thereafter, on 05.12.2023, at around 1.00 a.m., the informant received a phone call from the Aalo Police informing that her daughter's body has been brought dead at General Hospital, Aalo and asked her to come and see the dead body. It is also stated that upon reaching there, she found her deceased daughter in a cloth full of blood and there were injury marks of brutal assault from upper-back shoulder till abdomen part, bruises on right hand, face and neck and the deceased was bleeding from lower abdomen and there were also cut marks on left toe.

5. On receipt of the F.I.R., a case was registered being Aalo P.S. Case No. 74/2023, under Sections 306/34 IPC. It is to be noted here that initially the case was registered on 04.12.2023 as Aalo P.S. UD Case No. 05/2023.

6. The present accused was called to the police station for enquiry in connection with the case and accordingly she appeared and was kept in police custody and thereafter she was shown to have been arrested on 06.12.2023. The accused filed a bail application being BA No. 63/2023 before the learned Chief Judicial Magistrate, Aalo, which was rejected on 14.12.2023 on the ground that the investigation of the case was in the nascent stage. Subsequently, another bail application was filed being BA No. 03/2024, which was also rejected on 31.01.2024 on the ground that in the absence of any change of

circumstances, the successive bail application cannot be entertained.

7. After completion of investigation, the police laid the Charge-Sheet on 02.02.2024 under Sections 302/120B/506/34 IPC. However, during the course of investigation, the I.O. could not find any materials to attract the offence under Section 306 IPC and accordingly dropped the said Section while filing the Charge-Sheet. In the course of investigation, the I.O. has also recorded the statements of 14 witnesses under Section 161 Cr.P.C.

8. Mr. K. Lollen, learned counsel for the applicant, submits that none of the witnesses examined under Section 161 Cr.P.C. have deposed which shows the involvement of the present accused person in the death of the deceased. The present accused has been arrested merely on suspicion as she is the first wife of the co-accused Shri Toni Lollen. Mr. K. Lollen, referring to the Charge-Sheet, submits that after thorough investigation, the I.O. had filed the Charge-Sheet and as per CCTC footage and after close analysis of the same, which reveals that on the ill-fated day on 04.12.2023, the co-accused Shri Toni Lollen has come out from his house and again entered the house at around 7.20 p.m. along with accused and their elder son. It clearly reveals that the accused person along with her son entered the residence of Toni Lollen on 04.12.2023 at 7.20 p.m. and after 40 minutes, at around 8.00 p.m., they left the residence of co-accused Shri Toni Lollen. Thereafter, the co-accused Toni Lollen started assaulting the deceased. Therefore, from the evidence collected during investigation, there is no involvement of the present accused person in the death of the deceased.

9. Mr. K. Lollen, learned counsel, further submits that the accused person has already been separated from the co-accused Shri Toni Lollen way back in the year 2016 and is separately staying with her son in a rented house away from the house of Shri Toni Lollen. He submits that the Charge-Sheet has already been filed and trial has began and therefore, further detention of the accused person in judicial custody will not serve any purpose. Since the Charge-Sheet has already been filed and the case has been committed to the Court of learned Court of Sessions, Aalo for trial and there is no immediate prospect of conclusion of the trial and the accused person is entitled to prepare her defence which is not possible while in judicial custody, the accused person may be released on bail as she will be deprived of right to defend herself during the trial.

10. Mr. K. Lollen, learned counsel for the petitioner, submits that apart from being innocent in the matter as there is no incriminating materials against the accused person, there is no chance of evading the trial and no custodial interrogation is required, therefore the accused may be released on bail. He further submits that the accused is serving as MTS in a Government Middle School at Hikar Gumin having permanent resident at New Market, Aalo, there is no chance of fleeing and also hampering or tampering with the evidence if she is released on bail.

11. In support of his submissions, Mr. K. Lollen, learned counsel, has relied on the order of this Court in the case of **Alok Kumar Vs. CBI**, passed in **BA No. 1940/2022** and also relied on judgement of the Hon'ble Supreme Court passed in **Sanjay Chandra Vs. CBI**, reported in **(2012) 1 SCC 40**.

12. In the case of **Sanjay Chandra (Supra)**, the Hon'ble Supreme Court has held as under:

"22) More recently, in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra](#), (2011) 1 SCC 694, this Court observed that "(j) just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important." This Court further observed :

"116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."

This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused [See *Babba v. State of Maharashtra*, (2005) 11 SCC 569, *Vivek Kumar v. State of U.P.*, (2000) 9 SCC 443, *Mahesh Kumar Bhawsinghka v. State of Delhi*, (2000) 9 SCC 383].

It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

This Court in [Gurcharan Singh and Ors. Vs. State](#) AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case.

26) When the undertrial prisoners are detained in jail custody to an indefinite period, [Article 21](#) of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial.

It is not in the interest of justice that accused should be in jail for an indefinite period."

13. The Hon'ble Supreme Court, in the case of **State of Kerala Vs. Raneef** reported in (2011) 1 SCC 784, has held which is reproduced herein below:-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is [Article 21](#) of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

14. Ms. L. Hage, learned Additional Public Prosecutor, referring to the Charge-Sheet, submits that since the accused person went to the house of the deceased and has given a threat being the first wife of the co-accused Shri Toni Lollen and the independent witnesses in the present case are the tenants of the accused as such there is serious apprehension of the witnesses being influenced. That apart, the crime is of murder. Therefore, the accused is not entitled for release on bail as the trial is practically not yet started.

15. She has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Anil Kumar Yadav Vs. State (NCT of Delhi) & Anr**, reported in **(2018) 12 SCC 129**, to project that in crimes like murder, the mere fact that the accused was in custody for many days, may not be a relevant consideration and the period of incarceration by itself would not entitle the accused to be enlarged on bail. She further submits that while considering the question of

grant of bail, the Court should avoid consideration of details of evidence as it is not a relevant consideration while it is necessary to consider *prima facie* case and extensive exploration of merit of case should be avoided.

16. Due consideration has been extended to the submissions advance by the learned counsels appearing for the parties and also perused the scanned copy of the Trial court record.

17. On perusal of the record, it is seen that the present accused is the first wife and the deceased was the second wife of the co-accused Toni Lollen. It is revealed from the record that on the evening of 04.12.2023, the accused had entered the house of co-accused Toni Lollen along with her first son and thereafter she left the house at around 8.00 p.m. It appears that incidence occurred after the present accused left the place of occurrence. The accused was arrested on 06.12.2024 and is presently in judicial custody for last 104 days. The police has also laid the Charge-Sheet on 02.02.2024 and the trial of the case has already started.

18. It is noticed that the investigation has already been completed and the Charge-Sheet has been laid before the Court. In my considered view, there is no scope of hampering the investigation or tampering of the witnesses. Now the trial has already began and the accused has to prepare his defence and as such, the further custodial detention of the present accused is not warranted.

19. This court is conscious of the fact that the accused is charged with serious offence of murder. At the same time, one cannot lose sight of the fact that the police has already completed investigation and the charge sheet is already filed

before the Court. Therefore, the presence of the present accused in the custody may not be necessary for further investigation.

20. The Hon'ble Supreme Court, has held that the concept of philosophy of the bail reveals that conceptually bail continues to be understood as a right for assertion of freedom against the state imposing restraint.

21. It is settled law that the jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. Needless to observed that while granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence and in support thereof, the severity of punishment which conviction will entail, the character, behavior, means and standing of the accused, the circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witness and evidence being tampered with, the larger interest of public and State and similar other consideration. It is also to be kept in mind that for the purpose of granting bail, it is to see as to whether there is a genuine case against the accused and the prosecution will be able to produce *prima facie* evidence in support of the case. It is not expected, at this stage, to have the evidence establishing guilty of the accused beyond reasonable doubt.

22. On consideration of the record, as noted above, it is seen that the investigation of the case has already been completed and the Charge-Sheet has been filed before the Court which was committed to the Court of learned Sessions Judge, Aalo and the trial has started and there are 4 (four) accused persons including the present accused and as many as 14 witnesses and 7

articles and documents are to be examined.

23. Having considered that the investigation has been completed and the Charge-Sheet has been submitted, in my considered view there is no scope of hampering investigation or tampering the witnesses and for fair trial, the accused has to prepare her defence and if the accused is not allowed to go on bail, she would be deprived of her right to prepare defence. That apart, no custodial interrogation is required and as such continuous custodial detention is not warranted.

24. Regard being had to the submissions of learned Addl. PP and the case law which she has placed reliance of the case of **Anil Kumar Yadav (supra)**, it is true that the in crimes like murder, mere fact that the accused is in custody for many days, may not be a relevant consideration and the period of incarceration by itself would not entitle the accused to be enlarged on bail. However, in the present case, it is not the long incarceration of the accused but the requirement of the accused for custodial interrogation. Since, this Court finds that the custodial interrogation of the accused is not required and as such, the custodial detention is not warranted and the accused be given an opportunity to prepare her defence, the accused in my considered opinion is entitled to post arrest bail.

25. Having regard to the submissions made by the learned Additional Public Prosecutor that the independent witnesses are the tenants of the present accused, it is stated at the Bar that those witnesses are not the tenants of the present accused, but the tenants of the co-accused namely, Shri Toni Lollen and the present accused has already separated way back in the year 2016 from the

co-accused and staying in a separate rented house in a different location. However, to allay the apprehension of the learned additional Public Prosecutor, this Court would put a strict condition in the present order.

26. In the light of above, this Court is of the view that further custodial detention of the present accused is unwarranted and the accused is entitled to be released on post arrest bail in the facts and circumstances of the present case.

27. Accordingly, it is provided that the accused be enlarged on bail on furnishing a bail bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Sessions Judge, Aalo, subject to the following conditions:

- (i) that the accused shall not communicate with the witnesses and she shall appear before the learned Trial Court as and when the date is fixed;
- (ii) that the accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (iii) that the accused shall not leave the jurisdiction of the learned Sessions Judge, Aalo, without prior permission.

28. The bail application stands allowed and disposed of.

JUDGE

Comparing Assistant