



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

Case No. : BA/45/2024

Kapwag Letey Lowang
Son of Late Phoawang Letey Lowang, resident of Village Borduria, PO and PS
Borduria, Tirap District, Arunachal Pradesh

VERSUS

The State of AP and Anr
represented by the PP of AP

2:Techi Lir
Age: 0
Occupation:
S/o Late Techhi Bagi,
Resident of C Sector, Yazali,
P.O & P.S. Yazali,
District-Lower Subansiri,
Arunachal Pradesh.

Advocate for the Petitioner : P Kalita

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 29-07-2024

Heard Mr. P. Kalita, learned counsel for the accused applicant. And also heard Ms. T. Jini, learned Addl. Public Prosecution for the State, respondent No.1. None appeared for respondent No. 2.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, has been filed by the accused applicant (affidavit sworn by wife of accused, one Ms. Chathak Letey in support of the bail application) praying for grant of post-arrest bail to the accused applicant, namely, Kapwang Letey Lowang, who was arrested on 13.11.2020 in connection with Sessions Case No.02/2021, under Sections 120(B)/302/316/201/34 of the IPC, corresponding to Banderdewa P.S. Case No.22/2020.

3. The prosecution case in brief is that on 05.11.2020, an FIR was lodged before the Officer-in-Charge, Banderdewa Police Station by one Shri Techir Lir (respondent No.2 herein) alleging, *inter-alia*, that the informant had suspected that Shri Dathang Suyang and Shri Lishi Roni, a residence of village Borduria, PO&PS-Khonsa, Tirap District and 'A' Sector, Naharlagun, Arunachal Pradesh had murdered his sister, namely, Techir Meena Lishi in a pre-planned manner and in a criminal conspiracy in between 12.40 PM to 2.00 PM on 05.11.2020 at Karsingsa Block point towards Banderdewa. It has been alleged that on the same day, at around 12.30 PM, his sister called him over phone from her cell No.8575201455 and informed that she is going to Karsingsa on

being called by her husband, Shri Lishi Roni and mother-in-law, namely, Smti Lishi Rani. Thereafter, at around 2.15 pm, the wife of the informant informed him that his sister has met with an accident and admitted at TRIMS Hospital, Naharlagun. Accordingly, the informant rushed to the hospital and found that his sister has already died.

4. Upon receipt of the FIR, the Officer-in-Charge, Banderdewa Police Station has registered a case being Banderdewa P.S. Case No.22/2020, under Sections 279/304(A) of the IPC. Subsequently, Sections 302/201/120-B of the IPC was added on the prayer of the Investigating Officer on 11.11.2020 on having found materials during the course of investigation. The accused applicant was arrested on 13.11.2020 by the police and since then, the accused applicant is languishing in jail hajot till date. The Police has seized 2(two) numbers of mobile phones, one wallet and the Aadhar card of the accused applicant. It is contended by the accused applicant that nothing incriminating has been seized from the possession of the accused applicant.

5. After completion of the investigation, charge-sheet has been laid being Charge-sheet No.03/2021 dated 01.02.2021 against 7(seven) accused persons, including the present accused applicant. The case has been registered as Sessions Case No.02/2021 and the charges were framed against the 5(five) persons including the accused applicant under Sections 120(B)/302/316/201/34 of the IPC. The 2(two) other accused, namely, Smti Taya Chumi and one Bijay Biswas @ Dengu were discharged from the case vide the order dated 20.12.2021. Thereafter, the police has submitted a supplementary charge-sheet being Charge-sheet No.03(1)/2022 on 15.01.2022.

6. It is stated that a criminal petition being Criminal Revision Petition No.08/2022 has been filed by the father of the deceased against the discharge of the co-accused, namely, Ms. Taya Chumi and Bijay Biswas @ Dengu. This Court vide the order dated 02.08.2022 has set aside the order dated 20.12.2021 against the order of discharge of the above mentioned two accused persons.

7. Mr. Kalita, learned counsel for the accused applicant, submits that on perusal of the allegation, narrated in the FIR, Forwarding Report and the charge-sheet, no case of non-bailable offence is made out against the accused applicant and the accused applicant has been arrested merely on suspicion on the basis of statement of the co-accused persons, which has no evidentiary value in the eyes of the law.

8. Mr. Kalita, learned counsel, submits that investigation of the case is completed and the trial has started and by now, 4(four) prosecution witnesses have been examined. He submits that on perusal of the deposition of the 4(four) prosecution witnesses examined by the Court below, nothing incriminating has surfaced against the accused applicant. He submits that the only role attributed to the accused applicant is that he was to co-ordinate or supervise the co-accused Dathang Suyang, to execute a plan to kill the deceased. In the statement under Section 164 Cr.P.C. of the co-accused Dathang Suyang, no overt or covert role has been attributed to the accused applicant in the alleged conspiracy, which led to the death of the deceased. Rather the co-accused, Dathang Suyang has confessed that he along with one Damrit Khoiyang had killed the deceased out of greed as the deceased was travelling with Rs. 9 to 10 lakhs.

9. Mr. Kalita, learned counsel, submits that the accused applicant was arrested on 13.11.2020. The police, after completion of the investigation has submitted a charge-sheet and a supplementary charge-sheet and the trial of the case has already been started. By now only 4(four) prosecution witnesses have been examined out of 38(thirty eight) numbers of prosecution witnesses listed in the charge-sheet and the accused applicant has all along been behind the bar i.e. more than 3 years and 3 months and there is a likelihood that the conclusion of trial would take long time.

10. He submits that in view of the above facts and circumstances and particularly considering that the accused applicant is languishing in jail for more than 3 years and 3 months, trial having been started and there is a likelihood that the conclusion of the trial would be prolonged as another 34(thirty four) prosecution witnesses are to be examined, the accused applicant may be granted post-arrest bail on any condition(s) that may be imposed by this Court. He further submits that there is no chance of hampering and tampering with the evidence, there is no chance of absconding and to evade the trial as he is a permanent resident of Tirap District, Arunachal Pradesh.

11. Mr. Kalita, learned counsel for the accused applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Sheikh Javed Igbal@AshfazAnsari@Javed Ansari Vs. The State of Uttar Pradesh*, passed on 18.07.2024 in Criminal Appeal No.2790/2024 and *Rihan Vs. The State (Gnctd)*, passed on 20.11.2023 by the Hon'ble Delhi High Court.

12. On the other hand, Ms. T. Jini, learned Addl. Public Prosecutor for the State, while referring to the case record, particularly, the statement of the accused applicant

under Section 161 Cr.P.C. submits that record reveals that the accused applicant is a close associate of the main accused, Shri Lishi Roni and there are enough materials which indicates the involvement of the accused applicant in conspiring the murder of the deceased. She submits that there are altogether 38(thirty eight) prosecution witnesses and, as on date, only 4(four) prosecution witnesses have been examined. In the event, the accused applicant is released on bail and being *prima facie* involved in conspiracy in the murder of the deceased, there is every possibility of the accused being hamper and tamper with the evidences as well as the witnesses of the case. Therefore, she submits that the accused applicant is not entitled to be released on bail at this stage.

13. Ms. Jini, learned Addl. P.P., submits that the accused applicant is facing a trial on a charge of conspiracy to commit a murder and the gravity of the offence alleged against the accused applicant is severe and there are enough materials to show his involvement. She further submits that the Hon'ble Court while granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detail examination of the evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders the reason for *prima-facie* concluding why bail is to be granted, particularly, when the accused is charged of having committed a serious offence. The Court has to consider the nature of accusation and the severity of punishment in the case of conviction and the nature of supporting evidence. The reason of apprehension of tampering of the witnesses or apprehension of threat to the complainant and *prima facie* satisfaction of the Court in support of the charge.

14. In support of her submissions, Ms. T. Jini, learned Additional Public Prosecutor,

has placed reliance on the case of *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav*, reported in 2004(7) SSC 528.

15. I have considered the submissions of the learned counsel for the parties and also perused the materials available in the scanned copy of the case record transmitted from the learned Sessions Court, Yupia.

16. It is noticed that out of 38(thirty eight) prosecution witnesses, only 4(four) prosecution witnesses have been examined by the learned Sessions Court as on date. The accused applicant was arrested on 13.11.2020 and he is languishing in the jail for the last more than 3 years and 3 months. It may likely that a considerable time may be taken for conclusion of the trial.

17. On consideration of the record, it reveals materials against the accused applicant which indicates, *prima facie*, his involvement in conspiracy to murder the deceased. The charge levelled against the accused persons including the present accused applicant is severe and heinous in nature. Though the accused applicant is in long incarceration and there is a likelihood of taking considerable time to conclude the trial, that by itself would not be a ground for grant of bail. The host of other factors including the seriousness of offence charged against the accused applicant is to be taken into consideration. Materials on record reveals that certain transactions were made to the accused applicant and *prima facie* the accused applicant, he being close associate of main accused, with other 6(six) co-accused(s) have conspired to murder the deceased, although it would be a matter of trial to establish the guilt or otherwise of the accused applicant.

18. In the facts of the present case, at this stage, if the accused applicant is released on bail considering the nature of materials placed by the prosecution as well as the seriousness of the offence, there would be a likelihood of hampering and tampering with the evidence or influence the witnesses as there are another 34(thirty four) prosecution witnesses to be examined.

19. This Court is not oblivious to the observation and the settled position of law that an accused is entitled to a speedy trial. The Hon'ble Supreme Court in a catena of judgments has held that an accused or an under trial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-under trial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

20. Reference may be had to the judgement of the Hon'ble Supreme Court in the case of *Sheikh Javed Iqbal@AshfazAnsari@Javed Ansari* (Supra).The relevant paragraphs are quoted herein below:

"22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an under trial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-under trial on the ground that the charges

are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act along with Sections 489B and 489C IPC. He was in custody as an under trial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution...."

21. In *Rihan* (Supra) the Hon'ble Delhi High Court, has held which are reproduced herein below:

"23. However, the probative value of evidence which has come on record and the credibility of the witnesses will be seen by the stage of trial Court at the stage of trial, but at this juncture this Court cannot shut its eyes to the above noted gaps in the evidence which have come on record, which tilts the balance in favour of the petitioner for grant of bail.

24. Out of 22 witnesses cited by the prosecution, only public witnesses have been examined till date, therefore, the good number of witnesses are yet to be examined which will inevitably lead to a protracted trial.

25. Further, the petitioner is in custody for more than two and a half years. The investigation being complete, in the facts and circumstances of the present case, no useful purpose will be served in keeping the petitioner in judicial custody. It is not the case of the prosecution in the status report that the petitioner has a criminal record or he is a flight risk. Furthermore, material witnesses having being examined, there is no possibility of petitioner influencing them in the event of the being enlarged on bail

26. Considering the above factors in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/Jail Superintendent Duty Magistrate, further subject to the following conditions-...."

22. This Court is also conscious that the Hon'ble Supreme Court, time and again held that the law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the

stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, before granting bail, the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering of the witness or apprehension of threat to the complainant or witnesses and prima facie satisfaction of the Court in support of the charge.

23. *In the case of Rajesh Ranjan @ Pappu Yadav(Supra), the Hon'ble Supreme Court has held which is reproduced herein below:*

'10. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence,

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge; (See Ram Govind

Upadhyay Vs. Sudarshan Singh and others (2002 (3) SCC 598) and Puran Vs. Rambilas and another (2001 (6) SCC 338)....”

24. In the present case, the main grounds on which the accused applicant has sought for post-arrest bail is long incarceration of the accused applicant and as there are altogether 34(thirty four) prosecution witnesses to be examined out of total 38 (thirty eight) prosecution witnesses by the learned Court below and the same will take long time to conclude the trial. However, it is not the case that there is no end in sight for the trial to conclude, rather it appears that the trial is progressing on its right phase. Having considered the same, this Court is of the view that although the ground of long incarceration and prolong trial are also the grounds which may be considered for granting bail, the same are not the only grounds to be considered. An equally important factor to be taken is the seriousness of the offence. Thus, this Court is of the view that the accused applicant would not be entitled for grant of bail at this stage considering the seriousness of the offence as well as the likelihood of tampering with the evidences and witnesses in the present case.

25. For the reasons stated herein above, this court is not inclined to grant post-arrest bail to the accused, namely, Kapwang Letey Lowang, in connection with Session Case No.02/2021, under Sections 120(B)/302/316/201/34 of the IPC, corresponding to Banderdewa P.S. Case No.22/2020.

26. The bail application, therefore, stands rejected.

JUDGE

Comparing Assistant