GAHC040005422024

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

Case No. : BA/46/2024

Abdul Muim
Son of Mastakim Ali, Telluliang, Tezu, Lohit District, Arunachal Pradesh permanent resident of Borpurahoria Village, PO Manikganj, PS Karimganj, Karimganj District, Assam

VERSUS

Thee State of AP
represented by the PP of AP

Advocate for the Petitioner : D K Deori

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 09-05-2024

Heard Mr. D. K. Deori, learned counsel for the applicant. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 439 of the Cr.P.C., 1973, praying for grant of bail to the accused, namely, *Shri Jaynal Ahmed* in connection with Tezu,

P.S. Case No. 28/2024 under Sections 304/34 IPC, who has been arrested on 19.03.2024.

3. An F.I.R. has been lodged by one Mr. Govind Arangham on 18.03.2024, which is reproduced hereinbelow:

> "*To,*
> *The Officer-in-Charge*
> *Tezu Police Station*
> *Lohit District*
> *Arunachal Pradesh*
> *Dated 18/03/2024*
>
> *Sub:- FIR*
>
> *Sir,*
>
> *This is to inform you that today on 18/03/2024 at about 1955 hrs, three (03) children namely Miss Rita Tanti (19 Yrs), Miss Sita Tanti (16 Yrs) and Ajay Tanti (13 Yrs) C/O Dhananjay Tanti, R/O. Tribal Colony, behind Govt. Hr. Sec. School, PO/PS Tezu appeared at Tezu PS and verbally informed that one unknown person who was assaulted by some person and kept in front of their house has been lying unconscious or dead since morning. On getting this information, self Inspector G. Arangham, SI H. Jugli (NEDO), SI P.Baja, H/C K.P.Singh, Ct. (Dvr) K.Pertin & PS ready party rushed to the spot to verify the matter.*
>
> *As per the lead of the informant party i.e Miss Rita Tanti, Miss Sita Tanti & Shri Ajay Tanti the party reached the spot at around 2030 hrs where a dead body of one Late Jumbom Basar, S/O Late Lijum Basar, Vill-Gori, PO/PS- Basar, Dist.-Lepa-Rada, AP, C/o.Jira Umpey, R/o.Harupahar, PO/PS Roing, Dist Lower Dibang Valley AP has been found lying dead on the footpath in front of the house of one Mr. Dhananjay Tanti (adult), S/o Late Gangadhar Tanti, R/o.Tribal Colony, behind Govt Hr. Sec. School, PO/PS Tezu in cultivation field area with some fresh injury marks on his body parts whereas the trio informant have been found to be the children of Mr. Dhananjay Tanti. On enquiry, Mr. Dhananjay Tanti and his children revealed that the person was brought in front of their house by some labourers from the nearby construction site located @ about 200 metres away from their house carrying in a jute-sack. It was revealed that Late Jumbom Basar and Shri Gopal Tanti, S/o Dhananjay Tanti were beaten up at the construction site on being caught trying to steal the iron-rod from the site in the morning of 18/03/24. Later at about 0800 hrs of 18/03/2024 Shri Gopal Tanti was released by the party after beaten whereas Late Jumbom Basar was brought in front of Tanti's house by the labourer*

carrying him in a jute sack after beaten him. Immediately the labourers namely Jainal Ahmed (32 Yrs), S/o.Fajlu Miya, Vill-Batrshi, PO/PS-Tilla Bazaar, Dist-Karimganj, Assam along with thekedar namely Abdul Rauf (33yrs), S/o. Mastokim Ali, Vill-Borpurahoria, PO/PS-Manikganj/Karimganj, Dist.- Karimganj, Assam, R/o.Telluliang, Tezu were examined @ the site itself where they revealed that the duo Late Jumbom Basar & Shri Gopal Tanti tried to steal the iron-rod from their site where they caught them red-handed @ about 0400 hrs of 18/03/2024 and informed their site owner Mr. Batunso Kri on which the owner along with his wife came to the site @ about 0700 hrs and they both beaten up the duo with some sticks and later they have to carry Late Jumbom Basar upto Dhananjay Tanti's house in a jute sack in unconscious state after beaten him as per the direction of the owner Mr.Batunso Kri. The jute-sack with jute rope and a dried bamboo used to carry Mr.Jumbom Basar from the site to the spot were also recovered and seized as per the disclosure of the thekedar Abdul Rauf. The body of Late Jumbom Basar was taken to ZGH Tezu where the concern doctor declared him brought dead and thus kept in the mortuary for further course of legal action.

This is submitted for your kind information and necessary legal action please.

Your's faithfully,
Sd.
Mr.Govind Arangham(41 Yrs)
S/o.R.Arangham
C/o.OC Police Station, Tezu
Dist.-Lohit, AP.
M.No.8974829077..."

Accordingly, a case has been registered being Tezu, P.S. Case No. 28/2024 under Sections 304/34 IPC. The accused was arrested on 19.03.2024.

4. Mr. D. K. Deori, learned counsel for the petitioner submits that the accused person *Mr. Jaynal Ahmed* is a labourer engaged in a construction works under *Shri Batunso Kri.* The accused is innocent and was not involved in assaulting the deceased. He along with the other accused, only apprehended the deceased and one person, namely, *Shri Gopal Tanti* as they were stealing iron rods from the construction site. He further submits that the accused person along with his

friends after apprehending the deceased and one *Shri Gopal Tanti,* informed his employer *Shri Batunso Kri*. If at all, it may be his employer who has assaulted the deceased.

5. Mr. D. K. Deori, learned counsel for the applicant further submits that the accused, was arrested on 19.03.2024 and since then, he is in the judicial custody. There is no requirement of custodial interrogation. The Police has already recorded his statement under Section 161 Cr.P.C. Therefore, he submits that there is no ground to put the accused in the custody and as such, he prays for release of the accused person on bail with any conditions that may be imposed by this Court.

6. Mr. G. Tado, learned Additional Public Prosecutor, while referring to the Case Dairy submits that as per the statements recorded under Sections 161 as well as 164 Cr.P.C. of the accused person and the witnesses, it is revealed that the accused person after apprehending the deceased and one more person had tied them in a cement pillar in the construction site and thereafter, informed their employer. The employer in his turn, has assaulted the deceased and other persons who were alleged to have stolen the iron rods, which led to the death of the deceased. Therefore, the ingredient of Section 34 is clearly attracted to the accused. He submits that the main accused one *Shri Batunso Kri* is yet to be arrested as he is absconding as on today. The investigation is yet to be concluded. Therefore, he submits that the accused is not entitled to be released on bail at this stage as releasing the accused at this stage will hamper the proper investigation of the matter.

7. Considered the submissions of the learned counsels for the parties and also perused the Case Diary.

8. On the perusal of the Case Diary, it is seen that the alleged accused has recorded his statement under Section 161 of the Cr.P.C. that he has apprehended the deceased and one *Shri Gopal Tanti* while they were stealing the iron rods from the construction site. Thereafter, they were tied in the cement pillar and informed their employer one *Shri Batunso Kri*. The said *Shri Batunso Kri* and his wife came to the construction site, where the deceased and one *Gopal Tanti* were apprehended and tied up, and they had assaulted them.

9. It appears that no further custodial interrogation is required, although the main accused is yet to be arrested.

10. Having considered the materials available on record, I am of the view that no impediment would be caused to the investigation if the accused is released on bail, as no further custodial interrogation appears to be required considering the nature of the present case.

11. In view of above, I am of the considered view that the accused is entitled to be released on post arrest bail. Accordingly, it is provided that the accused person, namely, *Shri Jaynal Ahmed* shall be released on bail in connection with Tezu, P.S. Case No. 28/2024 under Sections 304/34 IPC on furnishing a bail bond of Rs. 10,000/-, with 2 (two) suitable sureties of like amount, one surety has to be a local resident, to the satisfaction of the learned Chief Judicial Magistrate, Lohit District, Tezu, on the following conditions:

(i) That the accused applicant shall make himself available for interrogation before the Investigating Officer once a week for a period of one month and as and when required;

(ii) That the accused applicant 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/her from disclosing such facts to the Court or to any police officer; and

(iii) That the accused applicant shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Lohit District, Tezu, without prior permission.

9. Accordingly, Bail application stands allowed and disposed of.

10. Send back the Case Diary.

JUDGE

Comparing Assistant