



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

Case No. : BA/52/2024

Morge Nochi
a permanent resident of Biru 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 : Dugmar Kamduk, K. Eshi, M. Ete, L. Tadam, M. Ratan

Advocate for the Respondent : Mr. T. Ete, Addl. P.P. (A.P)

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

03.06.2024

Heard Mr. D. Kamduk, learned counsel for the applicant. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State.

2. This is a bail application under Section 439 of the Cr.P.C., 1973, praying for release of the accused, namely, *Shri Toni Lollen*, on post arrest

bail in connection with the Aalo P.S. Case No. 74/2023 under Sections 302/120(B)/507/34 IPC, who was arrested on 05.12.2023.

3. The case of the prosecution is that on 05.12.2023, at 1700 Hours a written F.I.R. was filed by one *Smti Yari Ruchi* to the effect that her deceased daughter namely, *Ms. Juli Ruchi*, aged about 25 (twenty-five) years got married to the accused *Shri Toni Lollen* in the year 2020 and started living with him and after few months, the accused started torturing her daughter. On 04.12.2023, the elder sister of the deceased *Ms. Yapi Ruchi* received a phone call from the deceased at around 1730 hours and informed that first wife of the accused had arrived at her residence and forcefully asked the deceased to vacate her residence. Again, at around 1825 hours, the deceased told her elder sister that the accused had verbally warned her to vacate the residence and further the first son of the accused had warned the deceased not to give birth to any male child as it would divide his share in the property. It is also alleged that the first wife of the accused had also called her elder brother, namely, *Shri Lidu Ruchi*, warning that he must take his sister back from his residence. Further, the deceased made a call to her brother that she has been brutally assaulted and sustained injury in her person. Lastly, at 0100 hours, she received a call from the Police that her daughter has been brought dead at General Hospital, Aalo. Upon reaching there, she found that her daughter's cloth was full of blood with grievous injury marks on upper back, shoulder till abdomen, bruises on right hand, face and neck and the deceased was bleeding from lower abdomen.

4. On receipt of the information, initially a case was registered being Aalo P.S. Case No. 74 of 2023 under Sections 306/34. Thereafter, on the information of the accused *Shri Toni Lollen*, a UD Case vide Aalo P.S. U.D. Case No. 05/2023 under Section 174 Cr.P.C. was registered. After completion of the investigation, the Police has laid down the Charge-sheet No. 02/2024, under Sections 302/120(B)/506/34 IPC against the accused *Shri Toni Lollen* and 3 (three) others. The Investigating Authority has prayed for omission of Section 306 and rescind the UD Case as mentioned above. There are 14 (fourteen) numbers of prosecution witnesses to be examined during the trial. It is informed that the trial is in the stage of consideration of charges.

5. Mr. D. Kamduk, learned counsel for the applicant, submits that the alleged accused person and the victim Lt. Juli Ruchi had a love affair and was supposed to solemnized their marriage in the month of December, 2024. The first wife of the accused has never objected to the second marriage and she had only objected regarding the transfer of property in the name of victim *Lt. Juli Ruchi* as the accused and the first wife have one son out of their wedlock. On her protest, the accused revealed that the brother of the victim was forcing him to transfer the property in her name if they desired to marry. Therefore, the first wife had to make a phone call to the brother of the victim and had some argument with him. The accused and the victim had an argument after the first wife and his son left the place. The accused had also left the place after an argument with the victim. The accused after coming back, found the door locked from inside and he kicked the door till it opened up and when he entered

the room, he found the deceased hanging from the ceiling fan. The accused had informed the incident to his cousin brother and they have rushed to the Police Station and reported the incident. Thereafter, the mother of the victim had lodged an FIR on 05.12.2023 against the accused person and 3 (three) others. Thereafter, the accused was arrested on 05.12.2023. Since then, the accused person is languishing in jail.

6. Mr. D. Kamduk, learned counsel, submits that the Police has already filed a Charge-sheet and as such, there is no chance of hampering and tampering of the evidences by the alleged accused person. There is no requirement of custodial interrogation. The accused does not have any past criminal record and is not a previous convict. He submits that the continuous detention of the accused person would cause grave prejudice not only to the accused person but to his family also. The alleged accused person is the only person in his family to look after the family including his minor son.

7. He submits that the Hon'ble Supreme Court has held that bail is the rule and committal to jail an exception. The refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

8. Mr. Kamduk, learned counsel, submits that the co-accused(s) in the case have already been released on bail and therefore, the accused person is entitled for release on bail on the principle of parity as the investigation of the case is completed by filing the Charge-sheet by the Police. The continuous detention of the alleged accused in jail will deprive

the right of defense to the accused person.

9. Mr. D. Kamduk, learned counsel, submits that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. Therefore, he submits that the accused, namely, *Shri Toni Lollen*, may be released on bail on any terms and conditions that may be imposed by this Court.

10. In support of his submissions, Mr. Kamduk, learned counsel, has relied on the judgment of the Hon'ble Supreme Court in the case of ***Sanjay Chandra vs. CBI***, reported in **(2012) 1 SCC 40**.

11. *Per-contra*, Mr. T. Ete, learned Additional Public Prosecutor, while vehemently objecting to the prayer for release of the accused person on bail, submits that the condition laid down under Section 437 (1) (i) is *sine qua non* for granting bail even under Section 439 of the Cr.P.C. He submits that it is settled position of law that the matters to be considered in an application for bail are whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; nature and gravity of the charge; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail; character, behavior, means, position and standing of the accused; likelihood of the offence being repeated; reasonable apprehension of the witnesses being influenced.

12. Mr. T. Ete, learned Additional Public Prosecutor, submits that this Court requires to consider as to whether bail ought to be granted in a matter like the present one, which involves a serious criminal offence of murder. It must consider the relevant factors like the nature of accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused. While referring to materials in the Charge-sheet, he submits that it clearly reveals that the accused *Shri Toni Lollen* was present at the time and place of occurrence at the residence of the victim *Lt. Juli Ruchi* in the evening of 04.12.2023. During the course of investigation, on the scanning of the CCTV footage, the presence of the accused from beginning to end at the time of incident is clearly seen although the accused person had attempted to make the incident a case of suicide. The *prima facie* commission of crime is clear and the offence alleged is serious in nature, which entails punishment of imprisonment for life. It is, therefore, submitted that the accused *Shri Toni Lollen* is not entitled to be released on bail just because no custodial interrogation is required and the accused has been behind the bar since more than 5 (five) months. The fundamental considerations are the factors like nature of accusations made against the accused and the manner in which the crime is alleged to have been committed, the gravity and seriousness of offence and the role attributed to the accused person.

13. Mr. T. Ete, learned Additional Public Prosecutor, has relied on the judgment of the Hon'ble Supreme Court, in the case of ***Ajwar vs. Waseem and anr.***, reported in **2024 SCC OnLine SC 974**.

14. I have considered the submissions of the learned counsels appearing for the parties and perused the scanned copy of the Trial Court Records.

15. The case appears to have been initiated initially under Section 306 of IPC and thereafter, a UD case on the information of the accused person *Shri Tonin Lollen*. The investigating authority after collection of materials as well as on due investigation, found it to be a serious offence of murder. Accordingly, after completion of the investigation, a Charge-sheet has been laid down under Sections 302/120(B)/506/34 IPC against the accused and 3(three) other accused(s).The present accused is considered as the main accused in the case.

16. Record reveals that the present accused person *Shri Toni Lollen* in the evening of 04.12.2023 at around 1718 hours came out of the house (place of occurrence) and again entered the house at around 1720 hours along with his first wife and his son. The first wife was seen talking with someone over the phone and from her expression it reveals that she was arguing with someone over the phone. The first wife and the son appears to have spent around 40 (forty) minutes at the place of occurrence. After departure of the first wife and the son, the accused person and the victim *Lt. Juli Ruchi* started argument and had a fight, wherein, it is clearly seen that the accused assaulted the victim. Though the accused person has stated that he was at the residence of his grandfather from 1830 hours to 2000 hours but it was seen that he went out from his house at 1806 hours and came back at 1916 hours again had a fight with the victim. Though

the accused person has stated to have broken the bedroom door after 2000 hours and found the deceased hanging in the ceiling fan, it is found that he already broke the door at 1919 hours and started assaulting the deceased. At 2012 hours he was seen carrying a red mug from the attached toilet in their bedroom, after that the victim was never seen coming out from her bedroom. It is also seen from the CCTV footage that the alleged accused had never gone out of their room till the death of deceased *Lt. Juli Ruchi*. All these materials are revealed from the analysis of the CCTV footage and after investigation by visiting the place of occurrence and re-analysis of the scene of the crime.

17. Having considered the materials, *prima facie*, the present accused was all along present at the time of incident, as revealed from the CCTV footage by the Investigating Officer. Therefore, *prima facie* there is an involvement of the accused in the crime. However, during the consideration of the application for bail, the *prima facie* involvement in the crime and seriousness of offence, in my view, are not the only factors, there are other host of factors which are required to be considered.

18. The accused was arrested on 05.12.2023 and the accused is in continuous incarceration for the last more than five months. The Charge-sheet has already been filed and the trial has commenced. There is no requirement of any custodial interrogation. It is not the case of the prosecution that the accused shall tamper or hamper the evidences and there is a potential threat to the informant or witnesses if the accused person is released on bail. It is also not the case of prosecution that the

accused person shall flee from justice if he is released on bail. The fundamental objection and case of the prosecution is heavily emphasized on the seriousness of the offence and the applicability of the provision of Section 437(1)(i) Cr.P.C. and the *prima facie* materials against the present accused person.

19. It is true that while considering the application for grant of bail to the accused person the seriousness of the offence and the materials against the accused and the provisions of section 437(1)(i) Cr.P.C. should also be taken into consideration. However, the seriousness of offence cannot be the sole criterion for denying bail, the other equally important principle of personal liberty and the limited circumstances for restricting liberty before conviction is to be considered.

20. In the case of ***Sanjay Chandra*** (supra) the Hon'ble Supreme Court has held which is reproduced herein under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the

Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

21. In the case of **Ajwar** (supra) the Hon'ble Supreme Court has held as under:

"Relevant Parameters for Granting Bail

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail".

22. The Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation**, reported in **(2022) 10 SCC 51**, has observed that it has been the consistent stand of the courts, including this Court, that presumption of innocence, being a facet of Article 21, shall inure to the benefit of the accused. Resultantly burden is placed on the prosecution to prove the charges to the court of law. The weightage of the evidence has to be assessed on the principle of beyond reasonable doubt.

23. In the present case, on consideration of the submissions of the learned counsel and perusal of the records, it transpires that the accused is behind the bars since 05.12.2023. Investigation is complete, the chargesheet has been filed. There are 14 (fourteen) prosecution witnesses out of which none has been examined so far and as such the Trial of the case would take considerable time to conclude. Considering the period of incarceration and the chargesheet has already been laid as well as likelihood of trial being prolonged, I am of the considered view that the accused is deserved to be released on bail.

24. Having considered the matter in its entirety and in the light of the settled propositions of law as laid down by the Hon'ble Supreme Court, I am of the considered view that the accused *Shri Toni Lollen* deserves to be released on bail as the Chare-sheet has already been laid and the trial has commenced. There is no chance of hampering or tampering with the witness and evidences and also fleeing from justice. Although the materials reveal that the accused was seen to be present at the time and place of occurrence as per the CCTV footage, same would be a matter of trial to establish the guilt or otherwise of the accused during the course of trial.

25. In view of the above, without going into the merits of the case, at this stage, this Court is of the opinion that the learned counsel for the applicant has made out a case for grant of bail to the accused person.

26. Accordingly, the accused person, namely, *Shri Toni Lollen* in connection with the Aalo P.S. Case No. 74/2023 under Sections

302/120(B)/507/34 IPC shall be released on bail on furnishing a bail bond of Rs. 30,000/- with one surety of like amount to the satisfaction of the learned Sessions Court, Aalo, subject to the following conditions:

- (i). The accused person shall not leave the jurisdiction of the Sessions Court, Aalo without prior permission from the said Court.
- (ii). The accused person shall appear before the Sessions Court as and when the matter is taken up for hearing.
- (iii). The accused person shall not indulge in any criminal activity and shall not communicate with or come in contact with the informant or any members of the victim's family and the witnesses.
- (iv). The accused person shall not meet or communicate with the prosecution witnesses.

27. The bail application stands allowed and disposed of, accordingly.

28. It is made clear that any observation made hereinabove, shall not be construed to be an expression of opinion on the merits of the case.

JUDGE

Comparing Assistant