



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

Case No. : BA/66/2024

Chitraban Doeri
Son of Shri Hemanta Deori, resident of Village and PO Bahgora, PS Bihpuria,
Lakhimpur District, Assam

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Gautam Phukan

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 02.09.2024

Heard Mr. G. Phukan, learned counsel for the applicant. And also heard Ms. T. Jini, learned Addl. Public Prosecution for the State.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, has been filed by the applicant, *Shri Chitraban Deori* praying for grant of

post-arrest bail to the accused namely, Shri Lishi Roni, in connection with Sessions Case No.02/2021, under Sections 120(B)/302/316/201/34 of the IPC, arising out of Banderdewa P.S. Case No.22/2020. The accused was arrested on 10.11.2020

3. The case set up by the prosecution is that on 05.11.2020, at around 1300 hours, a telephonic information was received at Banderdewa Police Station that an accident has taken place near Karsingsa Blockpoint in between Nirjuli and Banderdewa. The Police then rushed to the spot, which is at a distance of 4Kms from the Police Station. On arrival, it was learnt that there were two persons in the vehicle at the time of the accident namely, late Techhi Meena Lishi, wife of Roni Lishi(accused) and her driver. Both the persons were already evacuated to the hospital. Later, it was informed that late Techhi Meena had succumbed to her injury at TRIHMS hospital, Naharlagun and the driver Dathang Suyang survived with minor injuries. Later, on 05.11.2020, at 1900 hours, a written FIR was received from Shri Techhi Lir of Yazali, Arunachal Pradesh to the effect that on 05.11.2020 at around 1230 hours his sister Techhi Meena Lishi, wife of Shri Lishi Roni (accused) telephonically called him from her mobile and informed him that she is going to Karsingsa on being called by her husband, Shri Lishi Roni(accused) and her mother-in-law, namely, Smti Lishi Rani. Thereafter, at around 2.15 pm, his wife informed him that his sister Techhi Meena had already died. He suspected that Shri Dathang Suyang and Shri Lishi Roni (accused), had murdered his sister, Late Techhi 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 Blockpoint towards Banderdewa. The informant rushed to the TRIHMS 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, initially under Sections 279/304(A), 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 was arrested on 10.11.2020 by the police and since then, the accused is in jail till date.

5. After completion of the investigation, charge-sheet has been filed being Charge-sheet No.03/2021 dated 01.02.2021 against 7(seven) accused persons, including the present accused Shri Lishi Roni. The case has been registered as Sessions Case No.02/2021 and the charges were framed against the 5(five) persons including the present accused 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 noticed 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. Phukan, learned counsel for the applicant, submits that the investigation of the case is completed and the trial has started and by now, only 6(six) prosecution witnesses have been examined. He submits that on perusal of

the deposition of the 6(six) prosecution witnesses examined by the Court below, nothing incriminating has surfaced against the accused. He submits that co-accused, Shri Dathang Suyang has confessed that he along with one Damrit Khoiyang had killed the wife of the accused (the deceased) out of greed as the deceased was travelling with Rs. 9 to 10 lakhs.

8. Mr. Phukan, learned counsel, submits that the accused was arrested on 10.11.2020. 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 started. By now only 6(six) prosecution witnesses have been examined out of 38(thirty eight) numbers of prosecution witnesses listed in the charge-sheet and the accused has all along been behind the bar i.e. 3 years, 9 months and 22 days and the conclusion of trial would take long time.

9. He submits that in view of the above facts and circumstances and particularly considering that the accused is languishing in jail for 3 years, 9 months and 22 days, trial having been started and there is a likelihood that the conclusion of the trial would be prolonged as another 32(thirty two) prosecution witnesses are to be examined, the accused may be granted 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, no chance of absconding and to evade the trial as he is a permanent resident of Naharlagun, Arunachal Pradesh.

10. Mr. Phukan, learned counsel for the applicant has placed reliance on the following judgments of the Hon'ble Supreme Court : (i) *Sanjay Chandra Vs. CBI*, reported in 2012(1) SCC 40; (ii) *Manish Sisodia Vs. Directorate of Enforcement*,

reported in 2024 0 Supreme (SC)645; (iii) *Pradeep Kumar Vs. State of Chhattisgarh*, reported in 2023 (5) SCC 350; (iv) *Indrani Pratim Mukerjea Vs. CBI*, reported in 2022 0 Supreme(SC) 1497; (v) *Satender Kumar Antil Vs. CBI & Anr.*, reported in (2022) 10 SCC 51 and (vi) *Lokesh Singh Vs. State of U.P & Anr.*, reported in 2008 SCC 753.

11. Ms. T. Jini, learned Addl. Public Prosecutor for the State, on the other hand, while referring to the case record, submits that there are enough materials which indicates the involvement of the accused in conspiring the murder of his wife (the deceased) as main accused. She submits that there are altogether 38(thirty eight) prosecution witnesses and, as on date, only 6(six) prosecution witnesses have been examined. The accused being the main accused and *prima facie* involved in conspiracy in the murder of the deceased, there is every possibility of the accused tampering with the evidences and influencing the witnesses of the case. Therefore, she submits that the accused is not entitled to be released on bail at this stage.

12. Ms. Jini, learned Addl. P.P., submits that the accused is facing a trial on a charge of conspiracy to commit a murder of his wife and the gravity of the offence alleged against the accused is severe and there are enough materials to show his involvement. She submits that as all the prosecution witnesses are either employees of the present accused or family members, there is every likelihood of influencing the witnesses, in the event, the accused is released on bail at this stage as only 6(six) prosecution witnesses have been examined. She further submits that the learned trial Court is taking up the matter on its right earnest as the trial is being taken up twice in a month.

13. 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.

14. Due consideration has been extended to the submissions of the learned counsel for the parties and also perused the materials available in the scanned copy of the case record.

15. The present bail application is the second bail application before this as earlier some other person has filed application being BA.120/2022 which was rejected by this Court on 19.01.2023.

16. It is noticed that out of 38(thirty eight) prosecution witnesses, only 6(six) prosecution witnesses have been examined by the learned Sessions Court as on date. The accused was arrested on 10.11.2020 and he is in the jail for the last more than 3 years and 9 months. It may likely that a considerable time may be taken for conclusion of the trial.

17. Bare perusal of the record, reveals enough materials against the accused indicating, *prima facie*, his involvement in conspiracy to murder his wife (the deceased). The charge levelled against the accused persons including the present accused is serious and heinous in nature. The accused is in incarceration for more than 3 years and 9 months, however, such incarceration by itself would not be a only ground for grant of bail. The host of other factors including the seriousness of offence charged against the accused is to be taken into consideration. Materials on record reveals that certain transactions were made by the accused and *prima facie* the accused, he being the 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.

18. In the facts of the present case, having considered the materials on record, seriousness of the offence and likelihood of hampering and tampering with the evidence and influence the witnesses as the prosecution witnesses are either employees of the accused or family members and there are another 32(thirty two) prosecution witnesses to be examined, I am of the view that it would not appropriate to grant bail to accused at this stage.

19. 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. This court would refer to the judgment of the Hon'ble Supreme Court in the **case of Sheikh Javed Iqbal@AshfazAnsari@Javed Ansari. Vs. State of Uttar Pradesh in Criminal Appeal No. 2790**. 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. 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. 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.

22. 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)..."

23. In the present case, the main ground on which the accused has sought for post-arrest bail is long incarceration of the accused and as there are altogether 32 (thirty two) more prosecution witnesses to be examined out of total 38 (thirty eight) prosecution witnesses, same would 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.

24. Having considered above, 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 cannot be admitted to bail at this stage considering the seriousness of the offence as well as the likelihood of influencing the 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, Lishi Roni, in connection with Session Case No.02/2021, under Sections 120(B)/302/316/201/34, IPC, arising out of Banderdewa P.S. Case No.22/2020.

26. The bail application stands rejected, accordingly.

JUDGE

Comparing Assistant