

GAHC010014042024



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

Case No. : AB/185/2024

RUSTOM ALI AND 3 ORS.
S/O LATE GANDA ALI @ TAJIMUDDIN
R/O NON-K, GARAPARI (PART), PS. DHULA, SUB DIVISION- MANGALDOI
DIST. DARRANG, ASSAM

2: MD. JAMARUDDIN
S/O LATE GANDHA ALI @ TAJIMUDDIN
R/O NON-K
GARAPARI (PART)
P.S. DHULA
SUB-DIVISION- MANGALDOI
DIST. DARRANG
ASSAM

3: GOLAP FULI
W/O MD. JAMARUDDIN
R/O NON-K
GARAPARI (PART)
P.S. DHULA
SUB-DIVISION- MANGALDOI
DIST. DARRANG
ASSAM

4: MALEKA
W/O LATE GANDA ALI @ TAJIMUDDIN
R/O NON-K
GARAPARI (PART)
P.S. DHULA
SUB-DIVISION- MANGALDOI
DIST. DARRANG
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. PADMINI BARUA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 08-02-2024

Heard Ms. P. Barua, learned counsel for the petitioners. Also heard Mr. K. Baishya, learned Addl. P.P., Assam for the State respondent.

This is an application under Section 438 of the Cr.P.C. for granting pre-arrest bail to the petitioners, namely, 1. Md. Rustom Ali, 2. Md. Jamaruddin, 3. Golap Fuli and 4. Maleka in Connection with Kharupetia P.S. Case No. 225/2023 registered under Sections 304-B of the IPC.

The C.D. has been received.

I have perused the same.

It is submitted by Ms. Barua, learned counsel for the petitioner that the accused petitioners are innocent and they are falsely implicated in this case.

The informant has lodged the FIR stating inter-alia that his daughter Miss. Abiya Khatun was poured kerosene and set to fire by her husband Rustom Ali and other accused persons.

On the night of the incident the petitioner who is the husband of the victim had taken the victim to the hospital and then to Mangaldoi Civil Hospital to save her life and thereafter she was brought to GMCH for better treatment where she succumbed to her injuries. As per the FIR there is no specific allegation of demand of dowry and any physical torture.

In that context the learned counsel for the petitioner relied decision of the Supreme Court reported in (2017) 1 Supreme Court Cases 101 (Bajinath and others Vs. State of Madhya Pradesh), mainly relied on paragraph 29 and 32 of the said case wherein the Hon'ble Supreme Court has expressed the opinion that to attract a case under Section 304-B of the I.P.C. the accused must have subjected the women to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Evidence Act. In the instant case there is only allegation brought against the accused petitioners and there is no specific allegation as stated above.

Further, it is submitted that the deceased left behind one minor child which is still in the custody of the husband of the deceased. The accused petitioner No. 2 is the brother-in-law of the deceased, accused petitioner No. 3 is the sister-in-law of the deceased and petitioner No. 4 is the mother-in-law of the

deceased.

The learned counsel for the petitioner submitted that the accused petitioners are ready and willing to cooperate with the investigation if the petitioners are granted privilege of pre-arrest bail.

Mr. K. Baishya, learned addl. P.P. has submitted that there is sufficient incriminating materials against the accused petitioners. From the statement of the witness and the informant it appears that she was subjected to mental and physical torture. It is stated that the accused petitioner No. 1 poured kerosene on her body to kill her. From the medical report also it is found that there was 70-75% burn injuries and she died on after shock due to burn injuries. In this context, Ms. Barua has submitted that the deceased made statement before the Doctor that she poured kerosene over her body by her own and she did not name the other petitioners.

Considering the statement made by the learned counsel for the petitioners and the materials from the case diary, it appears that the victim died leaving her only minor child and the allegations of mental and physical torture also brought against the accused petitioners. However, no specific date has been mentioned in the FIR but it is stated that the deceased was subjected to mental and physical torture leading to her death. It is a fact that the FIR has been registered under Section 304-B of the IPC and the prosecution has to prove the mental and physical torture demanding dowry which has been shown to be her cause of death and this ingredients has to be proved beyond all reasonable doubt. In that case only presumption can be drawn under Section 113-B of the evidence Act. But, the present case is in the investigation stage and the prosecution is to prove the case beyond reasonable doubt in its final stage of hearing and that can be collected by the Investigating Officer during investigation.

Considering the submissions of learned counsel for both sides and also considering the materials available in the case diary as well as the nature of offence, I do not find it to be a fit case to grant privilege of pre-arrest bail to the accused petitioners, namely, 1. Md. Rustom Ali, 2. Md. Jamaruddin, 3. Golap Fuli and accordingly, their prayer for pre-arrest bail stands rejected.

However, considering the age and ailment of the petitioner No. 4, I am of the considered opinion that her release on bail will not adversely affect the trial.

Accordingly, it is directed that in the event of arrest of the petitioner No. 4, named above, she shall be released on bail of Rs. 20,000/- (Rupees twenty thousand) only with one local surety of the like amount to the satisfaction of the arresting authority subject to the following conditions :

1. The petitioner No. 4 shall appear before the I.O. within 10 days from the date of the order.
2. The petitioner No. 4 shall make herself available for interrogation by the investigating officer as and when required.
3. The petitioner No. 4 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 her from disclosing such facts to the Court or any other police officer, and
4. The petitioner No. 4 shall not hamper the investigation or temper with the evidence of the case.

With the above observations and direction, the bail application stands disposed of.

Return the Case Diary.

JUDGE

Comparing Assistant