

GAHC010038202024



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

Case No. : Bail Appln./597/2024

PASUPATI NATH @ PASUPATINATH @ ASHISH @ SAURABH SINGHANIA
S/O- SRI SURESH PRASAD @ SURESH KUMAR, R/O - CHOTI KESOPUR
NALAPAR, KAWAL GACH , P.S - JAMALPUR, DIST - MUNGER , BIHAR ,, PIN
CODE- 811214

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : SUMI PHUKAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27.06.2024

Heard Mr. S. Rahman, learned counsel for the petitioner as well as Mr. K.K. Parashar, learned Addl. P.P. for the State.

2) The petitioner, namely, Pasupati Nath @ Pasupatinath @ Ashish

@ Saurabh Singhania, who was arrested on 06.02.2021, in connection with Palashbari P.S. Case No. 66/2021, corresponding to GR Case No. 199(K)/2021, under section 302 IPC, is praying for bail under section 439 CrPC.

3) The previous bail application of the petitioner, being B.A. No. 1569/2022 was rejected by this Court.

4) The learned counsel for the petitioner has submitted that one of the prime accused, namely, Barnali Goswami, the wife of the deceased, who was also one of the conspirator of crime was granted bail by order dated 29.06.2021, passed by the learned Sessions Judge, Kamrup. Moreover, one more co-accused, namely, Sunil Kumar @ Anupam Raj has also been released by the learned Sessions Judge, Kamrup by order dated 10.05.2021. Hence, the prayer for bail is also made by invoking the principle of parity. The learned counsel for the petitioner has submitted that out of 15 (fifteen) listed witness in the charge-sheet only 8 (eight) witnesses has been examined till 19.03.2024 and therefore, there is no possibility of an early conclusion of trial.

5) It is observed from the scanned copy of the TCR that the co-accused Sunil Kumar @ Anupam Raj was released on bail by order dated 10.05.2021. However, since 23.06.2021, he had defaulted in appearance and thus, jumped bail. Repeated NBWA was issued for securing the presence of the said Sunil Kumar @ Anupam Raj. Later, on 22.09.2023, he had surrendered before the Court of learned Sessions Judge, Kamrup. Therefore, the progress of trial was considerably delayed. Thereafter, charges were framed and explained to the accused persons by order dated 21.11.2023.

6) By order dated 04.03.2024, scanned copy of the TCR was called

for. The scanned copy of the records was received by the Registry on 02.04.2024. From the scanned copy of the TCR, it is seen that till 19.03.2024, 8 (eight) out of 15 (fifteen) listed PWs were examined by the prosecution. There is every possibility that by passage of time some more PWs have been examined. Thus, the accused persons including the co-accused, namely, Sunil Kumar @ Anupam Raj have contributed to the delay in the progress of trial.

7) The learned counsel for the petitioner had submitted that the evidence recorded so far does not incriminate the petitioner. The Court is unable to concur with the said submission. Moreover, it is well settled that the Courts are not required to examine the evidence so as to find out the sufficiency of the evidence, which must be left to the wisdom of the learned Trial Court.

8) On a perusal of the TCR, specifically the charge-sheet submitted in this case, it is the case of the prosecution that the wife of the deceased had called the petitioner and the other co-accused from Bihar and they were hidden in the bathroom of her matrimonial home. They came out in the night from the place of hiding and held the victim, namely, Pranjit Goswami and strangled him with a piece of cloth. The post mortem report also suggests homicidal death of the deceased by strangulation. As per the opinion of the Doctor, "*death was due to asphyxia as a result of ligature strangulation which was homicidal in nature.*" As per the charge-sheet overwhelming evidence is available against all the three accused, including the petitioner.

9) In view of the contents of the charge-sheet, it appears that the wife of the deceased, who is also a co-accused, had taken the professional service of the petitioner to murder her husband. Moreover, from a nature of

evidence by the PWs against the petitioner, if the petitioner makes default in appearing before the learned Trial Court after being granted bail, there will be remote chance to apprehend the petitioner.

10) The punishment for committing offence punishable under section 302 is death or imprisonment for life.

11) It would be relevant to quote herein below the provision of Section 436A Cr.P.C.:-

436A. Maximum period for which an under trial prisoner can be detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

12) Therefore, this is not found to be a fit case for releasing the petitioner, namely, Pasupati Nath @ Pasupatinath @ Ashish @ Saurabh Singhania on bail in connection with Palashbari P.S. Case No. 66/2021, corresponding to GR Case No. 199(K)/2021, under section 302 IPC. The said

case is tried by the learned Sessions Judge, Kamrup, Amingaon as Sessions Case No. 35/2021.

13) Thus, the prayer for bail is rejected once again.

JUDGE

Comparing Assistant