

GAHC010130872024



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

Case No. : Bail Appln./1900/2024

SOURAV GOENKA @ AGARWAL
S/O- SRI MANOJ AGARWAL, R/O- C/O- SANJED DAS, BHARALUMUKH
SLUICE GATE, RKC ROAD, P.S. BHARALUMUKH, PIN- 781009, DIST.
KAMRUP(M), ASSAM, REP. HEREIN BY HIS FATHER NAMELY MANOJ
GOENKA.

VERSUS

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

Advocate for the Petitioner : MR. S CHAMARIA, MR A N SARMAH, MR. D DAS, MR M M
ZAMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.08.2024.

Heard Mr. S. Chamaria, learned counsel for the accused. Also heard Mr. P.S. Lahkar, learned
Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused **Sourav Goenka @ Agarwal**, who has been languishing in jail hazot since 15.10.2023, in connection with the **Basishtha P.S. Case No.621/2023**, registered under Sections 120-B/302 IPC, read with Section 25(1)(a)/27(1)(a) of the Arms Act, for grant of bail.
3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Ajay Nath of Basistha Latakata on 13.10.2023.
4. The essence of allegations, made in the said FIR is that on 12.10.2023, at around 8-10 pm while the brother of the informant, namely, Anjan Nath was sitting on his motor cycle bearing Registration No. AS-01 BM 6614, near Ganesh Mandir of Khanapara, two motor cycle born miscreants shot him down. Though he was admitted at Metro Hospital, the Doctors declared him dead. It is the apprehension of the informant that his sister-in-law Gitashree Sinha and her mother and erstwhile husband and others had committed murder of his brother in a planned manner.
5. Mr. Chamaria, learned counsel for the accused, submits that the accused was arrested on 15.10.2023, and since then he has been languishing in jail hazoot for last 291 days. Mr. Chamaria further submits that the investigation of the case has already been completed and charge sheet has been submitted before the learned trial court and charge has also been framed against the accused on 03.05.2024 and till now not a single witness is examined. Mr. Chamaria further submitted that as many as 15 witnesses have been cited in the charge sheet and given the pace of trial; examination of 15 witnesses could not be completed within shortest possible time. Mr. Chamaria further submits that the accused will face trial and that he is a local person and there is no chance of absconding also. Referring to a decision of Hon'ble Supreme Court in **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh, in Criminal Appeal No. 2790 of 2024**, Mr. Chamaria submits that seriousness of the charge cannot be a ground to deny bail to the accused. Therefore, it is contended to allow the petition. Mr. Chamaria also submits that there is no prima-facie case.
6. On the other hand, Mr. Lahkar, the learned Addl. P.P. submits that charge against the accused was framed on 03.05.2024 and only one date elapsed since then, and that the prosecution side has to be given a fair opportunity to prove its charge and given that there is no material to suggest that his right to speedy trial is violated. Besides, Mr. Lahkar submits that the charges are very serious and his bail petition was rejected by the trial court considering the same and also considering misusing of liberty in the event of granting him bail. And therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also, I have gone through the decision in **Sheikh Javed Iqbal** (supra) referred by Mr. Chamaria.

8. It appears that the accused was arrested on 15.10.2023, and since then he has been languishing in jail hazoot for about 291 days. Further, it appears that the investigation of the case has already been completed and charge sheet has been submitted before the learned trial court and the learned trial court had framed charge against him, under Sections 120-B/302/201 IPC, read with Section 25(1-A)/27 of the Arms Act on 03.05.2024. Thereafter, the case was fixed for evidence and for last five dates the prosecution side had failed to produce any witness.

9. There is no quarrel at the bar that right to fair trial is a fundamental right guaranteed by Article 21 of the Constitution of India, and right to fair trial also includes the right to speedy trial. Referring to the decision in **Sheikh Javed Iqbal** (supra) Mr. Chamaria has rightly pointed this out in his argument, which also strengthened his submission. Seriousness of the charge cannot be a ground to deny bail to the accused while there is no end in sight for the trial to conclude.

10. The right to fair trial, however, is available not only to the accused, but also to the prosecution and the informant/victim and the society at large. And as such fair opportunity is also required to be given to the prosecution side to prove the charges against the accused.

11. Now, advertent to the facts of this case, I find from the record of the learned trial court that the case is pending in the stage of evidence. The prosecution side has failed to produce witnesses on five dates. No doubt there appears to be some laxity on the part of the prosecution side. But, from this it cannot be inferred that the prosecution side will take longtime to complete examination of witness and there is end in sight for the trial to conclude, as submitted by Mr. Chamari. His submission is based on surmise and conjecture. The delay, that took place here in this case, at best can be termed as **systemic delay**, in view of decision of Hon'ble Supreme Court in **Abdul Rehman Antulay v. R.S. Nayak** reported in (1992) 1 SCC 225, and also discussed in the case of **High Court Bar Association Allahabad v. State of U.P. & Ors.** reported in (2024) SCC OnLine SC 207. And to the considered opinion of this court the same is not sufficient to impair the right to speedy trial of the accused. This court is unable to agree with the submission of Mr. Chamaria that right to speedy trial is violated here in this case. His submission that there is no prima-facie case left this court unimpressed in as much as the learned trial court had framed charge against the accused having found prima-facie case. The order

of framing charge is not challenged before any court. Having not challenged the correctness or otherwise of the same, he cannot be allowed to argue that there is no prima-facie case.

12. Indisputably, the charges against the accused are very serious. The learned trial court, while rejecting the bail petition observed that there is possibility of tampering the witnesses and also fleeing away from justice. The observation cannot be said to be irrelevant or without any basis, if the same is examined in the light of the given facts and circumstances on the record.

13. Given the nature and gravity of the charge and punishment prescribed for the same and balancing the same with the societal interest vis-à-vis interest of the accused this court is of the considered opinion that no case for granting bail to the accused is made out. This Court is of the view that this is not a fit case to grant the privilege of bail, under Section 439 of the Cr.P.C., to the accused at this stage. And therefore, the same stands dismissed.

14. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant