

GAHC010216002023



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

Case No. : I.A.(Crl.)/913/2023

JITENDRA ROY @ JATIN
S/O LATE RAISHINI ROY, R/O DAKHIN BHOMORAGURI, P.S.- RUPAHIHAT,
DIST.- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
TO BE REP. BY THE P.P., ASSAM.

2:BRAHMANANDA ROY
S/O LATE GIYANENDRA ROY

R/O NO. 2 PACHIM SOWALONI
P.O.- PACHIM SOWALONI
P.S.- RUPAHIHAT
DIST.- NAGAON (ASSAM)
PIN- 782124.

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. A AHMED,MR. I U CHOWDHURY

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 30.07.2024

Heard Mr. A. Ahmed, learned counsel for the applicant. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent No. 1 and Ms. F. Hussain, learned counsel for the respondent No. 2/informant.

2. This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of sentence passed by the learned Additional Sessions Judge No. 2, Nagaon in Sessions (T1) Case No. 41 of 2015, vide judgment and order dated 21.08.2023, thereby convicting the accused/applicant under Section 304B of IPC and sentenced him to suffer Rigorous Imprisonment for 10 (ten) years and to pay fine of Rs. 10,000/- (Rupees ten thousand) only in default to suffer simple imprisonment for 6 (six) months, and also prayed for release of the accused on bail during the pendency of the connected appeal, being CrI. A. No. 366/2023.

3. Mr. A. Ahmed, learned counsel for the applicant, submitted that there is no evidence to fulfill the ingredients of Section 304B IPC and to take presumption under Section 113 of the Evidence Act. He further submitted that in the F.I.R. also, there is no statement of mental and physical torture on the deceased by demanding dowry. From the statements of the witnesses also, it is seen that there is no evidence to fulfill the ingredients that soon before her death, there was a dowry demand which compelled the victim to commit suicide as required under Section 304B IPC. More so, the Material Exhibit-1, i.e. the suicide note of

the victim, also does not say anything about the torture on victim in demanding dowry.

4. In this context, Mr. Ahmed further relied on a decision of this Court passed in **Crl. A. 51/2016 (Majid Ali Vs. The State of Assam & Anr.)** and stressed on paragraph Nos. 25 & 30 of the judgment, wherein the co-ordinate Bench of this Court had relied on the decision of Apex Court in **Mustafa Shahadal Shaikh Vs. State of Maharashtra [(2012) 11 SCC 397]** wherein discussing about ingredients of Section 304B IPC, the Apex Court has held that when the ingredients of Section 304B is established by reliable and acceptable evidence, such death shall be called dowry death.

5. Mr. Ahmed further submitted that there are some allegation of demand of dowry in the evidence of PWs-1, 2 & 3, but there is no evidence that at the relevant point of time the demand of dowry was made by the accused/applicant and as to whether the demand of dowry and torture led the victim to commit suicide to fulfill the ingredients of Section 304B IPC. He further submitted that during the entire period of trial, the accused/petitioner was on bail and he never jumped over any condition of bail. The accused was arrested on 10.01.2014 and he was released on bail on 22.02.2014 and during the entire period, he was on bail. There is no chance of absconding of the accused/petitioner if he is enlarged on bail during the pendency of the connected appeal. Mr. Ahmed further submitted that there is every chance of succeeding in the appeal and even if it is considered that if there is a dowry demand, at best it may be a case under Section 498A. There cannot be any conviction under Section 304B IPC and accordingly, Mr. Ahmed prayed for suspension of sentence and to release the accused on bail during the pendency of the connected appeal.

6. In this context, Ms. F. Hussain, learned counsel for the respondent No. 2/informant, has submitted that there are sufficient incriminating materials against the present accused/ applicant. She further submitted that the PWs- 1, 2 & 3 stated in their evidences that the accused/applicant used to demand Rs. 50,000/- and a gold chain and due to non-fulfillment of the said demand, the victim was subjected to mental and physical torture. She further submitted that the victim died at 1.00 a.m., but the family members of the victim was intimated about her death only at 12.30 to 1.00 p.m., i.e. more than 1 ½ hours after her death, and thus, they suppressed the material fact. She further submitted that the learned Sessions rightly passed the order of conviction and in paragraph Nos. 27 & 28 of the judgment, it is well discussed by the learned Trial Court below as to how there was demand of dowry and also discussed about the suicide note which confirms the testimony of PWs-1, 2 & 3.

7. Ms. Hussain further relied on the decision of the Apex Court passed in the case of **Satbir Singh & anr. Vs. State of Haryana**, reported in **(2021) 6 SCC 1**, wherein it has been discussed that 'soon before' cannot be construed to mean 'immediately before' and it is the duty of the prosecution to establish the existence of 'proximate and live link' between the dowry death and cruelty or harassment for demand of dowry.

8. She also relied on another decision of the Apex Court passed in **Ajhola Devi & anr. Vs. State of Jharkhand [Special Leave to Appeal (Crl.) No. 4221/2022]** and emphasized on paragraph No. 2 of the judgment, wherein it has been held that "*the legislative intent of incorporating Section 304-B was to curb the menace of dowry death with a firm hand. In dealing with cases under Section 304-B, such legislative intent has to be kept in mind. The offence under*

Section 304-B – offence of dowry death is the offence against society. Such offences have serious impact upon society. Keeping in mind the aforesaid aspects, imposition of sentence for the offence of dowry death is required to be considered. A strong message must go in the society that a person who commits such an offence of dowry death and/or the offences under the Dowry Prohibition Act shall be dealt with an iron hand.”

9. Accordingly, Ms. Hussain raised objection and submitted that this is not at all a fit case where the accused/applicant can be released on bail by suspending the sentence imposed on him.

10. Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent No. 1, submitted in this regard that the learned Court below had discussed in detail about the evidences of PWs-1, 2 & 3 wherein they have alleged that the accused/applicant used to demand Rs. 50,000/- and gold chain. Further he stressed on paragraph Nos. 27 & 28 of the judgment passed by the learned Sessions Judge, wherein it has been discussed about the suicide note which confirm the testimony of PWs-1, 2 & 3 regarding the mental and physical torture on the victim. Mr. Sharma also raised objection and submitted that it is not a fit case to release the accused on bail and accordingly prayed for dismissal of the present interlocutory application.

11. After hearing the submissions made by the learned counsels appearing for the parties, I have also perused the case record as well as the documents placed on record, specially the Material Exhibit-1, i.e. the suicide note of the victim/deceased.

12. It reveals that in the F.I.R., there is no such allegation of demand of dowry. However, it is a fact that PWs-1, 2 & 3 brought some allegation of demand of dowry against the present accused/applicant. But it is seen that in Material Exhibit-1, there is no such allegation of demand of dowry, however she brought some allegation of mental and physical torture on her which compel her to commit suicide. Further it is seen that the accused/applicant was on bail during the entire trial and he never jumped over any condition of bail while the trial was going on.

13. Thus, considering all above aspects of the case, viz-a-viz the materials available in the Case Record etc., I find it appropriate to allow the present interlocutory application. Accordingly, the operation of the sentence passed by the learned Additional Sessions Judge No. 2, Nagaon in Sessions (T1) Case No. 41 of 2015 vide judgment and order dated 21.08.2023, stands suspended till disposal of the connected appeal, being CrI. A. No. 366/2023.

14. Further, the applicant is hereby allowed to go on bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Additional Sessions Judge No. 2, Nagaon.

15. In terms of above, this interlocutory application stands disposed.

JUDGE

Comparing Assistant