

GAHC010240592023



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

Case No. : Bail Appln./3901/2023

MUKUT SAIKIA
S/O- LATE KHARKESWARMSAIKIA ,RESIDENT OF VILL- DAKHINGAON BY
LANE-1, H. NO-12 P.O- KAHILIPARA, P.S DISPUR , KAMRUP (M), ASSAM
781019

VERSUS

THE STATE OF ASSAM
(REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.)

2:THE CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY DIG AND HEAD OF BRANCH
CBI
SBC
KOLKAT

Advocate for the Petitioner : MR. FIRUZ KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 29-05-2024

Heard Mr. F. Khan, learned counsel for the petitioner Mukut Saikia.

2. The petitioner has filed this application under Section 439 of the Code of

Criminal Procedure, 1973 (CrPC for short) with a prayer for bail as he is behind bars since 25.07.2022 in connection with Sessions Case No. 230/2022 arising out of C.R. Case No. 4381/2021, arising out of CBI, SCB, Kolkata Case No. RV-10/S/2019 registered under Sections 120(B)/364/506/302 of the Indian Penal Code, 1860 (IPC for short) and Paltanbazar Police Station Case No.217/2010 registered under Sections 365/341/506/34 of the IPC.

3. Heard Mr. M. Haloi, learned Special Public Prosecutor, CBI and Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

4. The FIR unfolds that on 07.04.2010 at about 10:00 PM Sri Inder Singh Dell, aged about 75 (Seventy Five) years, was knocking on the main door of Magni Devi's compound gate. Inder Singh Dell was the caretaker of the campus of Magni Devi's compound. At that time, 3 (Three) persons approached in a Maruti Van and forcefully took Inder Singh Dell in the Maruti Van. The informant is Inder Singh Dell's son and he witnessed the entire incident but he could not save his father since the compound gate was already locked from inside by Smt. Lily Gangwal and Smt. Sahera Begum, who did not open the gate despite repeated requests. Prior to this, earlier in the morning at about 11:00 AM, one Mr. Saikia, who used to visit Smt. Lily Gangwal and Smt. Sahera Begum, had claimed that Khagen Sarma, the then ADGP, Assam, threatened Inder Singh Dell and asked him to vacate the residential house situated in the said compound. Sri Saikia however threatened Inder Singh Dell with dire consequences if he failed to vacate the compound.

5. The FIR was registered as Paltanbazar Police Station Case No. 217/2010 under Sections 365/341/506/34 of the IPC. On the next date i.e. on 08.04.2010, the dead body of Inder Singh Dell was found lying at Jajongbari, Machghat,

Chandrapur under the jurisdiction of Pragjyotishpur Police Station and Section 302 of the IPC was added with the permission of the learned Chief Judicial Magistrate, Guwahati.

6. It is submitted on behalf of the petitioner that investigation commenced and charge sheet was laid against the petitioner, but the petitioner was not arrested during investigation. The petitioner, who was cooperating with the Court's order, was forwarded to custody and he is behind bars till today. All the co-accused have been enlarged on bail but when the petitioner voluntarily appeared before the Trial Court pursuant to issuance of NBWA, the petitioner was forwarded to custody and his bail petition was rejected. The petitioner has thus prayed for bail on the ground of parity. Further, it is submitted that as the petitioner has been languishing in the jail for almost 2 (Two) years, his right to personal liberty has been curtailed as after submission of charge sheet, not a single witness has been examined till date.

7. On 30.09.2023, the petitioner's bail petition was rejected by the Trial Court by observing that charges were framed under Sections 120(B)/506/364/302/201 of the IPC and material witnesses are yet to be examined and there is every possibility that the witnesses may be influenced if the petitioner is at large.

8. It is submitted that as the petitioner has cooperated with investigation, there is no possibility of threats to the witnesses or impediment of trial. The petitioner is a permanent resident of the aforesaid locality and he is not a flight risk. The petitioner is willing to abide by any stringent conditions if imposed upon him.

9. The learned Special Public Prosecutor, CBI has raised serious objection stating that the petitioner time and again has applied for bail but repeatedly,

CBI was not made a party respondent, including this present petition, when the CBI was made a party respondent after an order was passed by this Court. The submission on behalf of the petitioner that the error of not making the CBI a party respondent was an inadvertent error, cannot be taken into consideration as this was not an inadvertent error.

10. Earlier vide order dated 14.02.2023 in connection with Bail Application No. 2164/20222, the petitioner's prayer for bail has been rejected. The petitioner has filed this bail application on new grounds stating that his personal liberty has been curtailed as not a single witness has been examined so far.

11. The learned Special Public Prosecutor has also filed a written objection. It is submitted that the Case Diary reveals that there are incriminating materials against the petitioner, who is involved with the incident of kidnapping and murder of Inder Singh Dell. The petitioner's case is not akin to the case of his co-accused, who are on bail and the question of parity does not arise at all. It is further submitted that the conduct of the petitioner is akin to that of a henchman of Late ADGP, Special Branch, who procured a plot of land in the name of his wife with false and fabricated documents. It is submitted that trial is proceeding and simultaneously this case is open for further investigation and more evidence is yet to be garnered to bring the culprits to book, who along with the petitioner in pursuance of a larger conspiracy committed the offence of murder and disposal of the dead body to screen themselves from punishment. Moreover, one witness has already been threatened by the petitioner. The statement of this witness was recorded under section 164 of the CrPC. It is submitted that the category of this offence falls under the category (B) of the offence as described by the judgment and order in *Satender Kumar Antil Vs. Central Bureau of Investigation and another* reported in (2022) 10 SCC 51 and

thus the petitioner is not entitled to bail. It is further submitted that the witness who was driving the Maruti Van, in which the victim Inder Singh Dell was forcefully shoved into by the petitioner and his co-accused, is petrified and he has filed an application for security. It is thereby submitted that trial may be adversely affected if the petitioner is admitted to bail.

12. I have considered the submissions at the bar with circumspection.

13 I have considered the role of the petitioner and the magnitude of the offence is taken into consideration. The merits of the case are not brought to the fore but it can be manifested that fair trial may be impeded if the petitioner is enlarged on bail. However, the submission of the petitioner that his personal liberty will be curtailed if he is not admitted to bail, cannot be ignored. The submission that the witnesses are apprehending threats to their life also cannot be ignored. At this juncture petition with prayer for bail is rejected. However, the petitioner is at liberty to apply for bail if the case is further procrastinated by the prosecution or by the trial Court. The Trial Court is directed to make every endeavour to expedite the proceeding for speedy disposal of the case.

14. In the above terms, this Bail Application stands disposed of.

JUDGE

Comparing Assistant