

GAHC010270272023



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

Case No. : Bail Appln./4376/2023

AZIZUL ISLAM HOQUE @ AJIJUL ISLAM HOQUE
S/O LATE MONTAZ ALI
VILL- BANDABPARA
P.O. AND P.S. BILASIPARA,
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, GOVT. OF ASSAM

Advocate for the Petitioner : MR. SURAJIT DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 08.01.2024

Heard Mr. S. Das, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State as well as Mr. A. S. Choudhury, learned counsel for the informant.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Azizul Islam Hoque @ Ajijul Islam Hoque*,

who has been detained behind the bars since 06.11.2023 (for last 63 days) in connection with Bilasipara P.S. Case No. 427/2023 under Sections 498A/302 of the Indian Penal Code.

The gist of accusation in this case is that on 06.11.2023 one Abdul Hakim Sheikh had lodged an FIR before the Officer-in-Charge of Bilasipara Police Station, *inter alia*, alleging that the sister of the first informant, namely, Anowara Khatun was married to the present petitioner about 17 years back and since the date of marriage, she was subjected to cruelty by the present petitioner. It is alleged that the petitioner used to pressurize the sister of the first informant for dowry. It is further alleged that on 04.11.2023 at around 8.00 AM in the morning, the petitioner started torturing the sister of the informant and was subjected to brutally assaulted and driven out of her matrimonial house. It is also alleged that on 06.11.2023 at about 4.00 AM, the petitioner killed the sister of the first informant and kept her body on the bed and tried to give it a colour of suicide.

Learned counsel for the petitioner has submitted that the petitioner was married to the sister of the first informant about 17 years back and for last 17 years, no case of any nature was filed against the present petitioner either by the deceased wife or any of his family members. It is further submitted by learned counsel for the petitioner that the petitioner is the Headmaster of an Educational Institution and he has no criminal antecedents. It is further submitted by learned counsel for the petitioner that on the date of the incident one of the daughters of the petitioner was sleeping with the deceased and it was she who informed the petitioner about commission of suicide by his wife by hanging in the bathroom.

Learned counsel for the petitioner has also submitted that otherwise the petitioner has already been detained behind the bars since for 63 days and considering the period of detention, the prayer for bail is made.

On the other hand, Mr. A. S. Choudhury, learned counsel for the informant has submitted that the petitioner has subjected the deceased sister of the informant to cruelty since the date of her marriage and as it is a case of murder and as sufficient materials are there against the present petitioner, he was vehemently opposed the grant of bail to the present petitioner.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Bilasipara P.S. Case No. 427/2023 and has submitted that the Investigating Officer has recorded the statement of the witnesses including the children of the deceased and there are evidence on record to suggest that the petitioner subjected his deceased wife to cruelty. However, it is also submitted that in the post-mortem examination report, no conclusive finding has been given as regards the cause of the death and the chemical examination of the viscera of the deceased, no poison was detected.

The learned Additional Public Prosecutor has also pointed out that in the post-mortem examination as well as in the inquest report, no injury marks over the body of the deceased was detected.

I have considered the submissions made by learned senior counsel for the petitioner, learned counsel for the informant as well as the learned Additional Public Prosecutor for the State and have perused the materials on record including the case diary of Bilasipara P.S. Case No. 427/2023.

Though, no conclusive finding of the cause of the death is given in the post-mortem examination report, however, on perusal of the post-mortem examination report, it appears that an oblique ligature mark was found in the upper neck of the deceased which was non-continuance in nature which normally suggest the case to be a case of suicidal hanging. It also appears that the Investigating Officer has already recorded the statement of relevant witnesses under Section 161 of the

Code of Criminal Procedure. Further, considering the fact that the petitioner is the headmaster of an educational institution and has no criminal antecedents and has been detained behind the bars for last 63 days, his further custodial detention does not appear to be necessary, if he cooperates in the investigation, for fair completion of the investigation of Bilasipara P.S. Case No. 427/2023.

In view of above, the above named petitioner is hereby allowed go on bail of Rs.30,000/- (Rupees Thirty Thousand) only with one surety of like amount to the satisfaction of Sub-Divisional Judicial Magistrate(M), Bilasipara subject to the conditions:-

- (i) That the petitioner shall cooperate in the investigation and shall appear before the Investigating Officer;
- (ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer.

With the above observation, this bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant