

THE HIGH COURT OF TRIPURA
A G A R T A L A

A.B. No.61 of 2015

A.B. No.62 of 2015

B.A. No.61 of 2015

(A) A.B. No.61 of 2015

Accused Applicant:

Echak Miah alias Assak Mia,
Son of Kala Miah,
Resident of Village Bashpukur,
Nirbhoypur, P.S. Jatrapur,
District- Sepahijala, Tripura.

By Advocates :

Mr. P. K. Biswas, Sr. Adv.
Mr. P. Majumder, Adv.

Respondent :

The State of Tripura,

By Advocate :

Mr. R. C. Debnath, Addl. P.P.

(B) A.B. No.62 of 2015

Accused Applicant:

Ana Miah
Son of Ashwaraph,
Resident of village- Nirbhoypur,
P.S. Jatrapur, District- Sepahijala.

By Advocates :

Mr. P. K. Biswas, Sr. Adv.
Mr. P. Majumder, Adv.

Respondent :

The State of Tripura,

By Advocate :

Mr. R. C. Debnath, Addl. P.P.

(C) Bail Appln. No.61 of 2015

Accused:

Sri Atikul Islam,
Son of Achmat Ali,
Village- Birampur,
P.S- Jatrapur,
District- Sepahijala, Tripura

Md. Samsul Haque,
Son of Achmat Ali,
Village- Birampur,
P.S. Jatrapur,
District- Sepahijala, Tripura.

(For and on behalf of the accused)

By Advocates :

Mr. P. K. Biswas, Sr. Adv.
Mr. P. Majumder, Adv.

Respondent :

The State of Tripura,

By Advocate :

Mr. R. C. Debnath, Addl. P.P.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **14.8.2015**

Date of Judgment & Order : **19.8.2015**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

These 3(three) applications are being disposed of by a common order since they arise out of the same FIR. These bail applications have been filed in respect of Jatrapur Police Station Case No. 33 of 2015 under Section 302 of the Indian Penal Code (IPC). Bail application No.61 of 2015 has been filed in respect of accused Atikul Islam. A.B 61 of 2015 and A.B 62 of 2015 are applicants filed for grant of Anticipatory bail by Echak Miah and Ana Miah.

[2] The complaint was filed by one Amir Hossain on 07.6.2015. In this complaint it was mentioned that his younger brother Khalek Choudhury was the owner of a Commander Jeep bearing registration No.TR-01-4313. Khalek Choudhury himself

used to drive the said vehicle. On 06.06.2015 Khalek Choudhury left his house at about 4.00 pm. On 06.06.2015, the vehicle was driven by some other driver as Khalek Choudhury was unwell. At about 7.00 pm, Khalek Choudhury collected the money from the driver from the Motor Stand of Kathalia and then came to Bashpukur market. He however, did not return home. According to the complainant at about 7.00 am, on 07.6.2015 his neighbour Chattar Miah called him and asked him whether Khalek Choudhury had returned home or not. When he replied that Khalek had not come back then Chattar Miah informed Amir Hossain that the vehicle of Khalek Choudhury is standing on the road at Naldhepa and at some distance a dead body is lying. On going to the site the informant found that the dead body was his brother Khalek Choudhury. There were injuries on the person of Khalek Choudhury and he had been murdered. He also stated that he had last seen his brother at about 9.00 pm at Bashpukur market. There is no person named in the FIR and admittedly, the FIR has been lodged against unknown persons.

[4] I have carefully gone through the case diary and I find that one of the witnesses whose statement has been recorded by the police stated that Khalek Choudhury had given a lift to that witness before going to Naldhepa and on the way Khalek Choudhury had told the witness that he was going to Naldhepa to meet Atikul Islam. Next morning the dead body of Khalek Choudhury was found. Another witness has stated that he had seen Khalek Choudhury and Atikul Islam together in Bashpukur market where they had tea in the shop of one Mihir Debnath. The case of the prosecution is that Atikul Islam allured Khalek

Choudhury to take a trip to Naldhepa at night and that thereafter Atikul in connivance with the other two bail applicants murdered the deceased.

[5] With regard to Ana Miah, the case of the prosecution is that both Ana Miah and Echak Miah are residents of Bagairchar and are closely known to each other. As per the prosecution story during interrogation of Atikul Islam he has stated that Ana Miah and Echak Miah know much more and they can say how the deceased was murdered. This interrogation was took place on 12.6.2015 to 17.6.2015. When the police went to the house of these two persons it found that they had absconded.

[6] The case diary reveals that during investigation Ana Miah stated that he had gone to Bangladesh to visit his ailing uncle and stayed there for one and a half months. According to the police Ana Miah is right when he states that he had gone to Bangladesh but according to the police this was with a view to avoid arrest. Even with regard to Echak Miah the case of the police is that he was absconding. I am not going into this aspect because I am not to decide the merits of the case. But if these facts are correct that Ana Miah went to Bangladesh without any passport then whatever might be the reason why he went it clearly shows that such a person can go to Bangladesh at any time to avoid arrest. During the pendency of the Anticipatory bail applications Echak Miah and Ana Miah were directed to appear before the Police authorities. During this interrogation they were asked to handover their mobile phones. Both of them stated that they had lost their mobile phones. However, both of them have

not made any report in this regard and the calls made to their phone numbers are unanswerable.

[7] The police has collected the CDR records of both these mobile phones of Echak Miah and Ana Miah and as per this CDR records of the police these two phones were operated from within the range of the two towers at Baramura and Nirbhoypur near the place of occurrence. These call details also suggest that there was conversation between Ana Miah and Atikul Islam at about 9.47 pm on 06.6.2015 that is a few hours before the murder. It is the case of the police that during investigation Echak Miah stated that he and Ana Miah had gone to Melaghar Sub-Division Hospital on 06.6.2015 at 10.30 pm and came back to Badhaichar on 07.6.2015 at 3.30 am. I am not at this stage deciding whether this record of interrogation is correct or not but if these two accused were at Melaghar then what were their mobile phones doing at the place of occurrence? According to the accused they had gone to Melaghar in connection with the treatment of his aunt Mamuna Khatoon wife of Safiq Miah. However, the police has also collected the record of the Melaghar Hospital which shows that Mamuna Khatoon was released from the Hospital on 07.6.2015 in the forenoon. Even the call details of Echak's phone show that he was present in the location at the place of occurrence since calls have been recorded from the same tower and the record also suggests that there was conversation between Echak Miah and Atikul Islam at about 9.11 pm on 06.6.2015 at which time Atikul Islam was at Bashpukur Market with Khalek Choudhury.

[9] In the State of Tripura there is an amendment to the provisions of the Code of Criminal Procedure and the Court can

release a person charged with murder only if it comes to the conclusion for reasons to be recorded in writing that there is reasonable ground for believe in that such person is not guilty of the said offence. At this stage though there may not be any clinching evidence against the accused it cannot be also said that they are not guilty of any offence. The Custodial investigation of Ana Miah and Echak Miah is required. They also have to be interrogated together with Atikul Islam. Therefore, I am of the considered view that at this stage bail/anticipatory bail cannot be granted to any of the applicants. All the 3(three) applications are accordingly rejected at this stage.

[10] However, the police should make an effort to complete the investigation at the earliest and the applicants are given liberty to apply for bail again to this Court after 6(six) weeks.

CHIEF JUSTICE

Dipesh