

Case No :AB 0000070/2015

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Party Name : GURUPADA DEBBARMA Vs THE STATE OF TRIPURA

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

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This petition for grant of anticipatory bail has been filed by the petitioner in respect of Jirania P.S. case No.5(10) of 1979 re-numbered as G.R. 2053 of 1979 registered against the petitioner Gurupada Debbarma.

This is a case under sections 323/325/302 of the Indian Penal Code (IPC) and normally this Court would be extremely reluctant to grant bail in a case of this nature.

However, the facts of this case make certain shocking revelations. On 14.10.1979 at 11.45 hours a written complaint was lodged by Smt. Kamala Debbarma with the Officer-in-Charge, Jirania Police Station alleging that on 13.10.1979 she got up and saw that her brother-in-law Bharat Ch. Debbarma was lying with bleeding injury on his head. She took him inside the house and shut the door. Her brother-in-law informed her that he had been attacked and injured by the present petitioner Gurupada Debbarma who allegedly fled away from the scene of occurrence. The petitioner is alleged not only to have attacked and injured Bharat Ch. Debbarma but also his mother-in-law, father-in-law and another brother-in-law. The seriously injured person was taken to hospital and thereafter, complaint was registered. Since the deceased died, the FIR was registered under section 302 of IPC.

Charge-sheet was filed in the case and in the said charge-sheet the accused was shown as an absconder with his address as Gurupada Debbarma, S/O. Ananta Debbarma of Hariraipara cobra khammer, P.S. Jirania, Tripura (W). According to the petitioner, in the year 1980 there were communal riots in Tripura and specially in the Mandai area and the petitioner thereafter started residing in N.E.C. Colony, P.O. Ashighar, Thaiplokphang village Gaon Panchayat, P.S. Mandai, District West Tripura. He has been living with his family there since 1979 or 1980. As far as the court proceedings of the petitioner are concerned, they were adjourned sine-die on the ground that the petitioner was absconding.

This Court on the administrative side had taken a conscious decision to revive a large number of cases which had been adjourned sine-die. Many of the cases which were adjourned sine-die related to rape, murder, extortion, kidnapping etc. Tripura was in the grip of terrorism activities. Many of the culprits fled away to Bangladesh at that time. After peace returned, many of these people came back to Tripura. There were more than 7000 cases which had been adjourned sine-die. The Cr.P.C. has no provision for adjourning a case sine-die. The total illegal method being followed by the prosecution as well as some of the Judges was that the statement of the Investigating Officer was recorded to the effect that the accused could not be traced out and the cases were adjourned sine-die. The order passed in most of the cases is that the statement of the Investigating Officer has been recorded under Section 299 of Cr.P.C. and the case is adjourned sine-die. Adjournments sine-die is an anathema to legal process. If cases are allowed to be adjourned sine-die, then we will never see the end of the cases. When cases are adjourned sine-die, the accused is obviously not interested in getting the case revived. The case goes into a cold storage and the Investigating Officer, the Prosecutor as well as the Judge totally forget the case which has been put into cold storage as if no crime has been committed. This has a serious affect on the credibility of the judicial system in the eyes of society. In some of the cases which were revived after I (on the administrative side) passed orders that all these cases would be revived, it was found that some of the people who were declared to be absconders had not only come back to Tripura but some of them had fought elections and one or two had even been elected to public offices. What would the victims of such a crime say when the so called fugitives are holding high offices and the criminal case is adjourned sine-die. The term "adjourned sine-die" is applicable only to legislative business and not to Courts and the practice of adjourning a case sine-die must come to an end forthwith in the State of Tripura.

In the present case also, no proper procedure was followed. The present case highlights the issues which were taken up by the Chief Justice on the administrative side. Here is a case of a person who is alleged to have murdered one person and injured three others. He was declared to be absconding. According to him, he has been residing at a distance of hardly 25 to 30 Kms. from the place of occurrence for the last 36 years. The question that arises is what was the police doing and why no efforts were made to trace out where the petitioner who is an accused in a murder case was living. It was only after this Court on the administrative side ordered that all these cases should be revived that somehow the police now found out where the petitioner is residing then also the petitioner has not been arrested and obviously has been given time by the police to approach this Court for grant of anticipatory bail.

As observed by me earlier, normally in a case of this nature, bail would not have been granted. However, this Court cannot lose sight of the fact that for 36 long years the petitioner has been residing barely at a distance of 25 to 30 Kms. from the place of occurrence and the Police Officials never thought it fit to trace out the petitioner or to arrest him.

This is not a case where the accused had fled away to Bangladesh. This is not a case where the accused had fled away to Assam. This is not a case where the accused had fled away to any other part of the country. This is not a case where the accused had left the country and the police could not trace him out. This is a case where the accused went to his native village which was only 25 Kms. away and the police was so incompetent that it could not find out the petitioner who was only living 25/30 Kms. away.

In my view, this clearly indicates that the police is either wholly negligent or is conniving with the petitioner. Whatever may be the truth, the petitioner cannot be sent behind bars for an occurrence which took place 36 years back.

In view of the above, it is ordered that in the event of his arrest, the petitioner shall be enlarged on bail on his furnishing a bail bond in the sum of Rs.25,000/- (rupees twenty five thousand) with two sureties each in the like amount to the satisfaction of the Arresting Officer subject to the following terms and conditions:-

- (i) That, the petitioner shall appear before the Investigating Officer at 11.00 a.m. on Monday (17.08.2015). He shall also appear before the Investigating Officer on every subsequent date for which a written notice is served upon him;
- (ii) The petitioner is further directed not to tamper with or in any manner influence the prosecution witnesses;
- (iii) The petitioner is further directed not to in any manner try to influence any of the prosecution witnesses;
- (iv) The petitioner is further directed not to cause any hindrance in the investigation;
- (v) The petitioner shall not leave Tripura without permission of the appropriate Court;
- (vi) In case, the petitioner violates any of the conditions or tries to delay the trial, the prosecution shall be at liberty to apply for cancellation of bail.

The Registrar General is directed to send a copy of this order to the Secretary, Home as well as the Director General of Police who shall carry out further inquiries and find out how many other cases are there of this nature relating to serious offences of murder, rape, extortion etc. where accused are living in Tripura but have not been apprehended.

On the petitioner filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner by tomorrow.