

GAHC010059712024



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

Case No. : Bail Appln./877/2024

JAHANGIR HUSSAIN AND ANR.
S/O YAKUB ALI @ ABDUL HUSSAIN
R/O VILL- KHAGENHAT,P.S. FALAKATA,
DIST. ALIPURDUAR WEST BENGAL.

2: MANNAN ALI
R/O VILL- DHULAGAON
P.S. FALAKATA

DIST. ALIPURDUAR

WEST BENGAL

VERSUS

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

Advocate for the Petitioner : MR. P DEKA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 10.05.2024

Heard Mr. P. Deka, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

- 2.** This is an application under Section 439 of the Code of Criminal Procedure praying for grant of bail to the accused/petitioners, who have been arrested in connection with Sessions Case No. 53/2023, under Sections 365/302/201 of the Indian Penal Code, pending before the Court of learned Sessions Judge, Bilasipara, arising out of Bilasipara P.S. Case No. 96/2022, under Section 365/302/201 of the Indian Penal Code.
- 3.** Scanned copy of the case record along with the Case Diary has already been received. Perused the same. Heard both sides.
- 4.** It is submitted by Mr. P. Deka, learned counsel for the petitioners, that the allegations leveled against the present accused/petitioners in the Charge-sheet are absolutely false and concocted and they have been falsely implicated in this case by the police authorities. They are innocent and no way connected in the alleged offence. After filing of the Charge-Sheet, case has already been committed before the Trial Court and presently the same is pending before the Court of learned Additional Sessions Judge, Bilasipara. The prosecution has already examined 3 (three) witnesses out of 9 (nine) numbers of witnesses. The

informant of the case adduced his evidence as P.W.-3, wherein he brought the allegation that the present accused/petitioner No.1 had killed his father and taken away the money from him. But, from his cross-evidence, it is seen that he is not aware as to how his father was killed and he only heard about the incident from others. He further submitted that out of 9 (nine) numbers of witness, 3 (three) are already examined and 4 (four) of witnesses are the police personnel and the remaining 2 (two) other witnesses are not the vital witnesses of the prosecution nor there is any scope for influencing by the present petitioners if they are released on bail. More so, a bare perusal of the statements of the witnesses including the informant does not reveal a case worthy of conviction. Furthermore, there is not a single whisper of allegations brought against the petitioner No. 2. So, considering all these aspects of the case and also considering the fact that the trial has already been commenced and 3 (three) witnesses are already been examined by the prosecution, it is a fit case to grant the privilege of pre-arrest bail to the present accused/petitioners. He further submitted that the petitioners are the only bread earners of their family and in their absence, their entire family is suffering and hence, their further custodial detention in connection with the present case amounts to violation of Article 21 of the Constitution of India.

5. Mr. P. Deka, learned counsel for the petitioners, further submitted that though both the accused/petitioners are the residents of West Bengal, but they are ready to abide by any stringent conditions that may be imposed on them if they are allowed to go on bail and will also regularly appear before the Court as and when the date is fixed and shall contest the case. He further submitted that the bail prayer for the present accused/petitioners cannot be rejected solely on

the ground that they hail from other State. Moreover, they are the permanent resident of their addressed locality and hence, there is no chance of absconding if they are granted with the privilege of bail.

6. In support of his submission, Mr. Deka, learned counsel for the petitioners, further relied on a decision of Apex Court passed in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.**, reported in **2022 0 Supreme(SC) 588**, wherein the Apex Court has expressed the view that "*the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.*"

7. The learned counsel for the petitioners further emphasized on paragraph Nos. 12 & 67 of the aforesaid judgment, which reads as under:

"12. Further this Court in Sanjay Chandra v. CBI (2012) 1 SCC 40, has observed that:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to

time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

67. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice."

8. In this context, Mr. P. Borthakur, learned Additional Public Prosecutor, has submitted that the case is very serious in nature wherein the allegation of murder is brought against the present accused/petitioners, who after committing the murder also burnt the body. They got arrested in connection with this case only through the IMEI Number of the mobile handset of the deceased, which was sold to one Pradip Sha, who is one of the vital witnesses of the entire prosecution case and is yet to be examined by the prosecution. Further he submitted that from the statement of the witnesses as well as from the materials available in the Case Diary, there is every probability of conviction

of the present accused/petitioners in connection with this case and there will be difficulty on the part of the learned Trial Court to procure the attendance of the present accused/ petitioners if they are granted with bail, as they hails from another States, i.e. West Bengal. More so, the probability of absconding or influencing of other vital witnesses also cannot be denied at this stage. The trial has already been commenced and the prosecution has already examined 3 (three) witnesses and hence, there is every probability of completion of trial within a short period.

9. The learned Additional Public Prosecutor further submitted that while granting bail, the Court has to keep in mind the nature of accusation, the nature of evidence in support thereof and severity of punishment of the case. In that context, he also relied on a decision of Division Bench of Apex Court reported in **(2022) 8 SCC 559 (Deepak Yadav Vs. State of Uttar Pradesh & Anr.)** and emphasized on paragraph Nos. 21 & 22 of the judgment, which read as under:

"20. In Prahlad Singh Bhati Vs. NCT of Delhi And Another 6, a two-Judge Bench of this Court stated the principles which are to be considered while granting bail which are as follows : -

"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail 6 (2001) 4 SCC 280 the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only

satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

21. As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another⁷, it is well-settled that the factors to be borne in mind while considering an application for bail are:

- (i) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) *nature and gravity of the accusation;*
- (iii) *severity of the punishment in the event of conviction;*
- (iv) *danger of the accused absconding or fleeing, if released on bail;*
- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of the offence being repeated;*
- (vii) *reasonable apprehension of the witnesses being influenced; and*
- (viii) *danger, of course, of justice being thwarted by grant of bail."*

10. After hearing the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the Case Diary and the case record.

11. It is seen that the allegation against the present accused/ petitioners are that they killed the father of the informant and the dead body was set on fire and thus, they tried to disappear the evidence of the offence. It is also a fact that both the accused/petitioners were got arrested in connection with this case

only through the IMEI Number of the handset of the deceased, which was sold to one Pradip Sha, who is considered to be one of the vital witness of the prosecution and also yet to be examined by the prosecution.

12. Thus, it is seen that the said witness Pradip Sha is known to the accused/petitioners and hence, the probability of influencing the said witness also cannot be denied at this stage. It is a fact that the bail should not be rejected only on the ground that the petitioners hails from other State. But, here in the instant case, it is seen that they were arrested in connection with this case from West Bengal only tracing out their locality through the help of the IMEI Number of mobile handset of the deceased, which was sold to one Pradip Sha, and thus, the probability of absconding of the present accused/petitioners also cannot be denied at this stage.

13. So, considering all above aspects of the case, nature and gravity of the offence and punishment prescribed for the same, I do not find it appropriate to allow the accused/petitioners to go on bail at this stage. However, the learned Court below is hereby directed to expedite the trial of the case by summoning all the remaining witnesses as earliest as possible. Resultantly, the present bail application stands rejected.

14. The bail application stands disposed of in terms above.

JUDGE

Comparing Assistant