

GAHC010056382024



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

Case No. : Bail Appln./816/2024

KRISHNA KAMAL BARUAH
S/O SRI BANESWAR BARUAH
R/O MEKANAR CHUBURI
P.O. BIHAGURI
P.S. TEZPUR,
DIST. SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP, ASSAM

2:RAJU TURI
S/O LT. RAMA TURI
R/O RAJAPATHAR GAON
P.S. DHEKIAJULI

DIST. SONITPUR
ASSAM
PIN-78411

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : Mr. J. A. Hassan, Spl. PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

19.06.2024

Heard Mr. J. Payeng, learned counsel for the petitioner. Also heard Mr. J. A. Hassan, learned Special Public Prosecutor for the State respondent No.1.

- 2.** As per the order dated 10.06.2024, the Registry was directed to appoint one Amicus Curiae to represent the respondent No.2.
- 3.** However, the respondent No. 2 did not appear, though it is submitted by the learned counsel for the petitioner that on inquiry it has been informed that the Amicus Curiae has already been appointed to represent the said respondent.
- 4.** This application filed under Section 439 of the Code of Criminal Procedure, 1973 praying granting bail to the accused/petitioner who has been languishing in jail hazot since 30.06.2022 in connection with Dhula P. S. Case No.114/2022 (Special POCSO Case No.131/2022 pending before the Court of Special Judge, Darang at Mangaldoi) under Sections 354/354(A)/302/201/511 *read with* Section 9(P)/10 of POCSO Act.
- 5.** The Case Record has been received and I have perused the same.
- 6.** It is submitted by the learned counsel for the petitioner, Mr. Payeng that after registration of the FIR dated 12.06.2022, the petitioner surrendered himself before the police and accordingly, he was arrested in connection with this case on 30.06.2022. He also submitted that the Police amalgamated the Dhola P.S. U.D Case No. 10/2022 along with the Dhola P.S. Case No.114/2022 as per order dated 29.06.2022 passed by the learned Sessions Judge, Darrang,

Mangaldoi. After investigation, the charge-sheet was submitted on 25.09.2022, vide C.S. No.146 under Sections 354/354(A)/302/201/511 *read with* Section 376 of IPC and Sections 9(P)/10 of POCSO Act against the accused/petitioner.

7. He further submitted that during the investigation, the post mortem of the deceased/victim was conducted in the Mangaldoi Civil Hospital on 11.06.2022, wherein, it has been observed that no external injury is seen except ligature mark. Thereafter, due to some political pressure, the special investigation team i.e. the CID took up the matter for investigation on 12.08.2022. During, the investigation, the team re-created the scene of exhumed dead body of the victim on 25.08.2022 i.e. after 74 days from the 1st Post mortem which was conducted after obtaining an order of the Court and sent the same to the Guwahati Medical College & Hospital (in short 'GMCH'), Guwahati for 2nd Post mortem examination. Accordingly, the 2nd Post mortem was conducted at GMCH on 25.08.2022 and the same was based on 1st Post mortem report, wherein, a ligature mark was described in the first autopsy report which could not be elicited during the second autopsy due to advanced state of decomposition. Thus, the 2nd Post mortem which was conducted after 74 days of the death of the victim cannot be conclusive evidence in any manner. Further, the Doctor of the 2nd Post mortem also relied on the first autopsy report and the finding of the second autopsy states that the cause of death was due to compression of neck during life.

8. Further, it has been stated that in the 2nd Post mortem report, the deceased was subjected to physical assault before her death which was not reflected in the observation made in the 1st Post mortem report. However, it is

reported in the second autopsy report that the investigating officer has requested to corroborate the autopsy findings to circumstantial evidences, which otherwise means that the autopsy report submitted by them is not the gospel truth. But, in the instant case, the entire prosecution case is based on second autopsy report and on the basis of the same the accused/petitioner is kept in detention for almost 2 years.

9. Mr. Payeng, learned counsel for the petitioner has submitted that the charge-sheet was filed against the present petitioner on the basis of some unreliable evidence and there is no material on record collected by the investigating team by which it can be convinced that the accused Krishna Kamal Baruah has not committed any offence as alleged in the FIR and in the charge-sheet. He also submitted that there is only one witness i.e. the milkman who stated in his statement recorded under Section 164 of Cr.P.C. that he had seen the victim hanging on a ceiling fan and the accused was holding her and also sought for his help, but, he refused to help the accused/petitioner. However, the said milkman, while recording the statement under Section 161 of Cr.P.C., he contradicted his statement that he helped the accused/petitioner in bringing down the hang deceased body on the ground and then to verandah. Again his statement was recorded by the investigating agency i.e. the CID, he again contradicted his statement and submitted that he refused to help the accused/petitioner to bring down the dead body of the deceased. Thus, except the 2nd Post mortem report and the DNA report, there were no iota of evidences collected by the investigation agency against the present petitioner to establish the case against him.

10. He further submitted that the accused/petitioner is a law abiding person

and coming to know about the lodging of the FIR, he himself surrendered before the investigating agency and since, 30.06.2022 he is in custody. More so, there is no chance of completion of trial within a short period as the investigating agency took another 5 months to file the supplementary charge-sheet in the said case and till date, the trial has not yet commenced and hence, considering his long incarceration period, he may be allowed to go on bail. More so, the evidences collected by the investigating agency are all documentary evidences and the witnesses are mostly official witness and as such there cannot be any hampering and tampering of the evidence of the witnesses by the petitioner, if he is granted with bail. The accused/petitioner has a small child and there is no one to look after his wife and children in his absence. More so, he will get a fair opportunity to defend himself, if he is release on bail. He also submitted that if the accused/petitioner is detained for longer period for an offence which is not committed by him, then, it will cause serious prejudice to his constitutional right of right of life under Article 21 of the constitution of India.

11. He also submitted that earlier the petitioner had filed an bail application before the Court immediately after the arrest of the accused/petitioner which was registered as 2303/2022, but during the pendency of the said bail application, the charge-sheet was filed and hence, the same was rejected with a direction to approach before the Trial Court with a prayer for regular bail. And another bail application was also filed by the petitioner on the same ground which was dismissed on withdrawal.

12. Mr. Payeng, learned counsel for the petitioner has submitted that the entire prosecution case is based on the medical evidence, which contains nothing but

the opinion of the expert and it cannot be considered as a substantive piece of evidence to convict the accused/petitioner. During the pendency of the inquiry, the blood sample of the petitioner was also collected, and the weapon which is stated to be the murdered weapon had also been recovered, but in connection with other case. More so, no blood stain was found in the rope by which the victim/deceased had committed suicide. Further, the weapon was sent for examination only after 1 month and hence, the chance of manipulation does not arise. He further submitted that as per the 1st Post mortem report, the cause of death was due to antemortem hanging which is suicidal in nature. More so, as per the said report no evidence of sexual assault was found and in the same time, from the test report of blood and semen on the vaginal swab was also negative, though the blood stain and semen found in the panty gave the positive test. Thus, considering the entire facts and circumstances of the case, the stage of proceeding as well as considering the period of incarceration, the accused/petitioner may be release on bail and being a responsible citizen he will appear before the learned Trial Court below as and when the date is fixed, if he is release on bail.

13. It is further submitted by the learned counsel for the petitioner, Mr. Payeng that object of the bail is to secure the attendance of the accused at the trial. He also submitted that the accused/petitioner being the permanent resident of the address locality and also being the responsible person, he will appear before the Court below regularly and further there is no chance of absconding of the accused/petitioner, if he is enlarged on bail. In addition to his submission, he relied on the decision passed by the Supreme Court reported in **(2020) 13 SCC 791 [P. Chidambaram vs. Directorate of Enforcement]**.

14. On the other hand, Mr. Hassan, learned Special Public Prosecutor has submitted that the 2nd Post mortem was conducted on the dead body of the victim as the 1st Post mortem report had created some reasonable doubt and hence, the matter was subsequently investigated by the special team i.e. CID. The said team re-created the scene and exhumed the dead body of the victim on 25.08.2022 and thereafter, the dead body was sent to the GMCH, Guwahati for conducting Post mortem. And as per the 2nd Post mortem report, the death of the victim was due to compression of neck during life. The deceased/victim was also subjected to physical assault before her death. However, it is a fact that the investigation officer was requested to corroborate the autopsy findings in substantive evidence as the 2nd Post mortem report had been conducted after a reasonable gap period and also admitted that the body was decomposed at the time of 2nd Post mortem.

15. He further submitted that as per the 2nd autopsy report there was contusion described over the skull and the neck which is antemortem in nature. More so, from the FSL report, it is seen that the test gave the positive result and also the DNA profile was matching with the DNA profile of the accused/petitioner which otherwise establishes that the accused/petitioner is guilty of the offence. Further, as per the 2nd Post mortem report, the death was caused due to antemortem ligature strangulation and homicidal in nature. In the same time, the under garments of the victim also gave the positive test of human blood and semen, which also matches with the DNA profile of the accused/petitioner. He further submitted that the trial has already been commenced, but some vital witnesses are yet to be examined and if the accused/petitioner is released on bail at this stage, then, there is every

probability of hampering and tampering of the witnesses. It is submitted that there are sufficient materials already collected during the investigation of the case and there are some vital witnesses to the prosecution case which are to be examined and thus, till examination of the same, the bail prayer of the present petitioner may not be considered.

16. In this context, Mr. Payeng, learned counsel for the petitioner has submitted that the disclosure statement as per the prosecution cannot be considered, as no such disclosure is made and it is just like a confessional statement which is not admissible in the eye of law. He further submitted that except the milkman there is no other eye witness to the prosecution case and most of the witnesses are official witnesses and hence, the question of hampering or tampering of evidences of the witnesses does not arise.

17. In this regard, Mr. Hassan, learned Special Public Prosecutor has submitted that if the accused/petitioner is granted the privilege of bail, then, it may cause prejudice to the other side, as the prosecution is yet to examine the vital witnesses and probability of hampering and tampering of the vital witnesses also cannot be denied and accordingly he submitted that this is not at all a fit case to consider the bail application of the present petitioner only on the ground of incarceration.

18. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and other relevant documents, it is an admitted fact that the accused/petitioner was arrested in connection with this case and he is in custody since 30.06.2022. It is also seen that the 2nd Post mortem was conducted as there was reasonable doubt in regards to veracity of the 1st post

mortem report and the doctor who conducted the 1st Post mortem is also made accused in the present case. However, it cannot be denied that the 1st Post mortem report had to be relied on which conducting the 2nd Post mortem report as the body was decomposed. But, after the proper dissection and the examination it has been opined by the team of doctors who conducted the 2nd Post mortem report that the death of the deceased was due to antemortem ligature strangulation and homicidal in nature and that apart it was also opined that there was injury in the skull of the deceased.

19. Apart from that, from the report of the FSL, it is seen that the under garments which was sent for FSL analysis also gave positive test of human blood and semen which also matched with the DNA profile of the accused/petitioner. Thus, it cannot be stated that it is a case of acquittal without proper assessment of the evidence. It is a fact that there are some contradictory evidence of the eye witness recorded under Sections 161 and 164 of Cr. P.C., but otherwise the statement recorded under section 161 of Cr. P.C. at the preliminary stage and subsequent statement recorded by the investigating agency i.e. CID found to be corroborating. More so, from the submissions made by the learned Special Public Prosecutor and from the record itself, it is seen that there are some more other vital witnesses to the prosecution case which are yet to be examined by the prosecution.

20. The Supreme Court in the case of ***Kalayan Chandra Satkar Vs. Rajesh Ranjan Alias Pappu Yadav & Anr. [(2005) 2 SCC 42]*** has expressed the view that the accused cannot be granted with bail solely on the ground that the accused had undergone incarceration for a period of three years and there was no likelihood of the trial being concluded in the near future. It was further held

that the sole ground of delay in conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of *prima facie* case, gravity of the offence and the allegation of tampering with the witnesses by threat and inducement when on bail. In the case of **Rajesh Ranjan [(2004) 7 SCC 528]**, the Supreme Court has held that mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to be enlarged on bail nor the fact that the trial is not likely to be concluded in the near future, either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail. It is also held that while considering the bail application, the Court must consider the nature of acquisition, the severity of the punishment in case of conviction, the nature of supporting evidence, reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant and *prima facie* satisfaction of the court in support of the charge.

21. Further, in the case of **Pramod Kumar Saxena vs. Union of India & Anr.**, the Supreme Court has held that mere long period of incarceration in jail would not be *per se* illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an under trial prisoner would not be violative of Article 21 of the Constitution. In the case of **Prahlad Singh Bhati Vs. NCT, Delhi reported in (2001) 4 SCC 280**, the Supreme Court has culled out the principles, which the courts has to consider at the time of granting or refusing bail as under:-

“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 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."

- 22.** Considering the entire facts and circumstances of the case, nature and gravity of the offence and considering the view expressed by the Apex Court, this Court is of the opinion that there is a *prima facie* case against the accused/petitioner and thus, at this stage it is not a fit case to enlarge the accused/petitioner on bail only considering the period of incarceration and hence, the same stands dismissed.
- 23.** The bail application stands disposed of in terms above.

JUDGE

Comparing Assistant