

GAHC010230182022



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

Case No. : Bail Appln./3015/2022

DR. ANUPAM SARMA AND 2 ORS

2: DR. ARUN CHANDRA DEKA

3: DR. (MRS.) AJANTA BORDOLOI

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER**14.11.2022**

Heard Mr. A.M. Bora, learned Senior Counsel assisted by Mr. D.K. Vaidya, learned counsel for the accused and Mr. M. Phukan, learned P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Dr. Anupam Sarma; Dr. Arun Chandra Deka; and Dr. [Mrs.] Ajanta Bordoloi, who have been languishing in jail hazot since 07.11.2022, in connection with the Dhula P.S. Case No. 114/2022, under Sections 376/302/120B/201/218 of IPC read with section 10 of POCSO Act read with section 14 of Child Labour [Prohibition & Regulation] Act 1986, for granting bail.

3. The said case was registered on the basis of an FIR lodged by one Raju Turi on 12.06.2022 to the effect that Sri Raju Nath, the accused No. 2 brought his minor daughter Smti X ["name withal"] aged 13 years, saying that he would admit her in school and provided education to her and also keep her as domestic help. But later on he kept her in the house of the accused No. 1 – Sri Krishna Kamal Baruah as domestic help. Then on 11.06.2022, at about 10:00 am Raju Nath, the accused No. 2 called him saying that his daughter intend to see him and when he came there he was told that his daughter died in an accident at village Sorupetia. Later on, he saw the dead body of his daughter at the time of doing post mortem examination at Mangaldoi Civil Hospital and he suspects that Sri Krish Kamal Baruah, the accused No. 1 had killed his daughter after committing

rape on her.

4. Mr. Bora, learned Senior Counsel submits that the case has already been investigated by police and after completion of investigation, the IO has laid charge sheet, dated 12.06.2022, against one Sri Krishna Kamal Baruah, and thereafter, during further investigation of the case the IO has arrested the present accused persons. Mr. Bora further submits that the accused persons are no way connected with the main offence under sections 376/302 of IPC and the IO has forwarded them mainly for commission of the alleged offences under sections 120B/218/201 of IPC, which are bailable in nature. Mr. Borah has further submits that the accused persons have never been served with the Notice under section 41(A) Cr.P.C. and on this court also the accused are entitled to bail. Mr. Borah further submits that the accused have been co-operating with the investigating agency and they have appeared before the I.O. not less than seven times and they are at the verge of retirement and they are also not the expert in forensic medicine and as such there may be some commission or omission on their part and they have roots in the society and there is no scope of jumping bail, and therefore, it is contended to allow this petition.

5. On the other hand Mr. Phukan, the learned P.P., has produced the updated case diary before this court and submits that as per the case diary the I.O. has not complied with the provision of section 41(A) Cr.P.C. and no reason also assigned for such non compliance. Mr. Phukan further submits that the accused were arrested only on 10.11.2022, and that the materials collected so far in the case diary reveals their complicity with the offences and the I.O. has added section 409 IPC very recently herein this case.

Referring to statement of one of the co-accused dated 07.11.2022 and 01.11.2022, Mr. Phukan submits that the present accused persons also received some amount of money for giving false P.M. report. Mr. Phukan further submits that the commission or omission on the part of the accused has serious implication in the outcome of the case, and therefore, it is contended to dismiss the petition. Mr. Phukan also referred one case law **Mahipal vs. Rajesh Kumar @ Polia & Another** reported in **(2022) 2 SCC 118**, in support of his submission. The learned P.P. also produced one bail objection petition dated 14.11.2022, filed by the I.O. of this case.

6. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary produced before this Court by the learned Public Prosecutor. Also I have carefully gone through the case law referred by the learned P.P.

7. It appears that there is substance in the submissions so advanced by Mr. A.M. Borah, the learned senior counsel for the accused that by virtue of section 120(B) the present accused cannot be roped with the substantive offences i.e. under section 376/302 IPC, which were allegedly committed by accused Krishna Kamal Baruah, who has already been charge sheeted after investigation. It also appears that though section 409 IPC is added by the I.O. at a later stage, yet, there appears to be inadequacy of materials in the case diary to rope the present accused with the said charge. And it also appears from the case diary as well as from the forwarding report of the I.O. as well as from the bail objection petition dated 14.11.2022, filed by the I.O. that if any offence at all is made out against the accused persons

the same are under section 120(B)/201/218 IPC which are bailable in nature, as submitted by Mr. Borah, the learned senior counsel for the accused. It also appears that though the learned P.P. has submitted that one of the co-accused has implicated the present accused in his statement recorded on 01.11.2022 and 07.11.2022, about receiving bribe money from the family members of the accused Krishna Kamal Baruah, yet said fact has never been mentioned in the forwarding report of the accused, dated 07.11.2022, and also in the bail objection petition dated 14.11.2022, nor there is addition of any section under the Prevention of Corruption Act. It is also to be noted here that in the bail objection petition dated 14.11.2022., where the I.O. has doubted the correctness of the finding so recorded by the accused Doctors while furnishing the P.M. report.

8. It also appears that charge sheet has already been submitted against the principal accused after completion of investigation. Material witnesses have already been examined by the I.O. It also appears that the accused persons have been co-operating in the investigation and further it appears that they are public servant and they have roots in the society and two of them are at the verge of retirement also, and as such, there is no chance of absconding.

9. Admittedly also here in this case the I.O. has not complied with the provision of section 41 (A) Cr.P.C. And admittedly also no reason has been assigned for such non compliance. The learned court below also failed to record its satisfaction on compliance or non compliance of section 41 and 41A Cr.P.C. and to follow the observation made by Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. Central Bureau of**

Investigation & Anr, reported in **2022 LiveLaw (SC) 577**, while the accused were produce before him. Be it noted here that in paragraph **No.73 (C)** in the judgment of **Satender Kumar Antil** (supra) Hon'ble Supreme Court has held that- **"The court will have to satisfy themselves on the compliance of section 41 and 41A of the Code. Any non-compliance would entitle the accused for bail."**

10. I have carefully gone through the decision of Hon'ble Supreme Court in the case of **Mahipal (supra)**, so referred by the learned P.P., and find that the said decision is restricted to its own fact and would come into his aid.

11. The concept and philosophy of bail was discussed by Hon'ble Supreme Court in several other judgments. A distillation of plethora of the precedents would reveal that conceptually, bail continues to be understood as a right for assertion of freedom against the State imposing restraints. Dictionary meaning denotes it as a security for appearance of a prisoner for his release. It is a conditional liberty. It must be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.

12. In the case of **Prahlad Singh Bhati vs. NCT, Delhi**, reported in **(2001) 4 SCC 280**, Hon'ble 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 the 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 (sic itself) 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 expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

13. Keeping these principles in mind and also considering the facts and circumstances discussed herein above, and further, balancing the right to personal liberty of the accused with that of the societal interest this court is of the view that further custodial detention of the accused are unwarranted here in this case. Accordingly, this court is inclined to allow this petition. It is provided that on furnishing a bond of Rs. 1,00,000/(Rupees one lac) with one surety of like amount, each, to the satisfaction of the learned Special Judge POCSO Court, Darrang at Mangaldoi, the accused persons be enlarged on bail. This privilege is however subject to the following conditions:

- (i) They will appear before the I.O. as and when directed;
- (ii) They shall not leave the jurisdiction of the learned Special Judge, POCSO Court, Darrang, Mangaldoi, without prior permission;
- (iii) They shall not indulge in hampering investigation or tampering the prosecution witnesses.

14. In terms of above this bail application disposed of. The case diary be sent back.

JUDGE

Comparing Assistant