

GAHC010251052023



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

Case No. : Bail Appln./4066/2023

MAJOR SHAILENDRA KUMAR YADAV
S/O RAM AWADHESH YADAV
OFFICER MAP QUARTER,
PALAMPUR HOLTA CAMP
KANGRA, HIMACHAL PRADESH.

VERSUS

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

2:MRS. NENKHONEI SINGSIT
M/O VICTIM,P.O. AN DP.S. HAFLONG
SONGPIJANG VILLAGE
DIMA HASAO, ASSAM,PIN-788819

Advocate for the Petitioner : MR. S MITRA
Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

07.12.2023

Heard Mr S Mitra, learned counsel for the petitioner, Major Shailendra Kumar Yadav. Also heard Mr M Phukan, learned Public Prosecutor for the State of Assam/respondent No. 1.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for

bail, as he is in custody since 25.09.2023, in connection with Haflong PS Case No. 74/2023, under Sections 326/354/370/374/34/506 IPC, read with Section 12 of the POCSO Act, 2012 and Section 3 of the SC and ST (Prevention of Atrocities) Act, 1989.

3. The FIR unfolds that the victim was handed over by the informant under the care of the petitioner and his wife, but instead of taking care of the victim-'X', the petitioner and his wife treated her as a domestic helper and subjected her to inhuman cruelty day in and day out. The victim was compelled to take care of the petitioner's infant. She was mercilessly and relentlessly assaulted by the petitioner's wife and sometimes the petitioner also used to assault the victim. The allegations in the FIR also incriminates that the petitioner and his wife caused grievous hurt on the victim. Naked photographs of the victim was also forcefully clicked by the petitioner's wife, who threatened to upload those photographs through the social media and internet.

4. It is submitted on behalf of the petitioner that the prime accused in this case is the petitioner's wife. The FIR clearly reveals that the grievous injuries were allegedly caused by the petitioner's wife and not by the petitioner. The petitioner cannot be held responsible under Section 374 IPC as the informant herself handed over the victim to the petitioner. The offence under Section 12 of the POCSO Act is not made out against the present petitioner. The petitioner has been languishing in jail for 70 days. His child, who is about three years old at present, is suffering from serious heart ailment with a hole in the heart. As his wife is behind bars, there is no one to take care of the child, who is in

urgent need of medical aid.

5. The learned Public Prosecutor has raised serious objection. It is submitted that although, it is mentioned in the FIR that the informant handed over the victim to the petitioner and his wife, but the victim was not taken care of as promised by the petitioner and his wife. Instead, both the petitioner and his wife subjected her to inhuman cruelty. It is submitted that the petitioner being a formidable person, an army personnel may be a threat to the witnesses as well as the victim.

6. It is submitted by the learned Public Prosecutor that the petitioner being an army personnel is under the oath of saving the citizens, but contrary to this, in this case, he is the reason behind endangering the life of a citizen. He was privy to the atrocities committed by his wife to the victim.

7. The Case Diary and the photographs of the victim clearly reveal that the victim had sustained grievous injuries. Her tongue was cut, her teeth broken, she had injury marks all over her body, including her back. The petitioner cannot remain oblivious of such cruelty extended to the victim, who was under his protection. The statements of the witnesses and the statement of the victim under Section 164 CrPC, clearly reveals that the petitioner did not allow the victim to meet her parents, which also implicates that the victim was wrongfully confined by the petitioner and his wife. A minor victim was forced to do household chores, like a slave. Human Rights have also been violated.

8. The medical certificate marked as Annexure-N, appears to be a very vague

document. The report was given on 22.11.2020, relating to the medical condition of the petitioner's minor son, who was an infant at that time, but at this juncture, the petitioner's son must be more than 3 years old. No certificate relating to medical emergency has been furnished by the petitioner. The old certificate without any seal of the hospital or the medical institute cannot be considered as a genuine document.

9. Learned Public Prosecutor has raised serious objection against the bail petition.

10. I have considered the submissions at the Bar with circumspection.

11. Indeed, there are incriminating materials against the petitioner and his wife. The photographs clearly reveal that the victim was subjected to extreme cruelty, but fortunately, the victim has survived. The statement of the victim also reveals that the petitioner is also complicit. He was privy to the cruelty extended to the victim, but he never stopped his wife from subjecting the victim to such inhuman and relentless cruelty. He had indeed harboured his wife.

12. I have also considered the submission of the learned counsel for the petitioner that he will cooperate with the remaining part of investigation. Case Diary reveals that the investigation has progressed considerably.

13. I have considered the submission of the learned counsel for the petitioner that the petitioner who is posted at Palampur Holta Camp, Kangra, will be unable to influence the investigation or exercise threats on witnesses.

14. To the reply of the learned Public Prosecutor, it has been submitted by the learned

counsel for the petitioner that at this stage of investigation, the petitioner may not be treated like a convict in a trial by curtailing his liberty.

15. After giving my thoughtful consideration to the submissions at the Bar and after considering the length of detention and the progress of investigation, the petitioner is enlarged on bail of Rs. 50,000/- (Rupees Fifty Thousand) only with two local sureties of the like amount to the satisfaction of the learned jurisdictional Court, under the conditions that-

- i) the petitioner shall not go near the vicinity of the victim,
- ii) the petitioner shall cooperate with the investigation as well as the trial,
- iii) the petitioner shall not default appearance or jump bail,
- iv) the petitioner shall not leave the country without prior permission, till completion of investigation as well as trial,
- v) the petitioner shall not exercise threats to witnesses or tamper with the evidence.

On breach of any of the bail conditions, the bail order shall stand cancelled.

16. Bail Application stands disposed of.

17. Send back the Case Diary.

JUDGE

Comparing Assistant