GAHC010158732022

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

Case No. : I.A.(Crl.)/435/2022

HARUN ALI
SON OF LATE SAMED ALI, RESIDENT OF VILL BANBARIA, P.O. BHELLA, DIST.BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE PP, ASSAM

2:MOKDAM ALI
S/O LATE ABDUS SAMAD ALI
P.S. BAGBAR
DIST. BARPETA
ASSAM
PIN 781308.

3:MAHIBUL HOQUE
S/O ABDUS SAMAD ALI
S/O ABDUS SAMAD ALI
VILL. BAGBAR
P.S. BAGBAR
DIST. BARPETA
ASSAM
PIN 781308

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

20.05.2024:-

Heard Mr. P. Kataki, learned counsel for the applicant and also heard Mr. B. Sharma learned Addl. P.P. for the respondent/opposite party No.1, Mr. D. Talukdar, learned counsel for the respondent/opposite party No. 2 and Mr. Z. Kamar, learned Sr. Counsel for the respondent/opposite party No. 3.

2. This interlocutory application is preferred by applicant, namely, Harun Ali under section 439(2) Cr.P.C. for cancellation of bail order, dated 29.06.2022, passed by the learned Sessions Judge, Barpeta, in Criminal Misc Bail No. 403/2022. It is to be noted here that vide impugned order dated 29.06.2022, the learned Sessions Judge, Barpeta has granted bail to respondent/opposite party No. 2 namely, Mokdam Ali and respondent/opposite party No. 3, namely, Mahibul Hoque.

3. The background facts leading to filing of the present application are briefly stated as under:-

> "On 21.03.2022,at about 7.30 pm, Rupjan Nessa, along with Rinima Begum has visited the Chamber of Doctor Binoy situated at Bilortari. While they about to embark on a vehicle then accused Mokdom Ali, Jumma @ Abdur Rahman and Chintu arrived at there in a Motor Cycle and then Mokdom Ali caught hold of Rinima Begum, by her neck and then Jumma @ Abdur Rahman administered dagger blow over her abdomen and thereafter Chintu had taken Mokdom Ali and Jumma @ Abdur Rahman away from the place of occurrence in the said Motor Cycle. On receipt of an FIR to this effect from the petitioner, Md. Harun Ali, on

22.03.2022, the Officer-in Charge (O/C) Barpeta Police Station has registered a case being Barpeta P.S. Case No. 338/2022, under section 341/302/34 IPC and endorsed S.I. Prakash Deka to investigate the case. During the course of investigation the I.O. had caused arrest of accused Mokdom Ali and Mahibul Hoque and forwarded them to the court. Thereafter, on completion of investigation, the I.O. laid charge sheet against accused Mokdom Ali and Mahibul Hoque to stand trial in the court under sections 120B/341/302/201 IPC and submitted Final Report against accused Jumma @ Abdur Rahman for want of evidence. Thereafter, the learned Sessions Judge, Barpeta vide impugned order dated 29.06.2022, in Criminal Misc Bail No. 403/2022, enlarged both the accused on bail."

4. Being aggrieved, the petitioner has approached this court for cancellation of the bail order dated 29.06.2022 on the following grounds:-

(i) That, the learned trial court erred in law in granting bail to the respondent without taking into account the gravity of the offence;

(ii) That, the learned trial court had taken note of the fact that without collecting the report from the FSL, the charge sheet has been submitted by the I.O., so that the accused cannot avail the benefit of section 167(2) Cr.P.C., but the trial court failed to take note of the fact that the report of FSL relates to blood stain on the clothes of the deceased and the mattress of the car which has no direct nexus with the involvement of the accused and as such it cannot provide a ground for bail;

(iii) That, the learned Sessions Judge, Barpeta had taken note of the fact that one accused, namely, Rafikul Islam has been shown as absconder in the charge sheet and that to procure his attendance and to start trial will

take considerable time which is against the principle of bail is rule and jail is exception as enunciated by Hon'ble Supreme Court and that till then the accused persons have to be detained, is bad in law;

(iv) That, the learned Sessions Judge has failed to take note of the fact that just two weeks prior to filing of the charge sheet, this court had rejected the bail petition being BA No. 978/2022 and it has failed to take note of the observation made by this court and also the seriousness of the offence;

(v) That, the learned Sessions Judge had failed to take note of the nature and gravity of the offence, in fact in order to get rid of the deceased who is engaged in a Civil Case pending before the Civil Court had hired professional killer to execute the deceased and the professional killers had executed the deceased in a public place in a gruesome way in a pre planned manner and that the motive has already been established;

(vi) That, the threat perception amongst the family members still persists as the Civil Case is yet to be disposed of and as such the impugned order is bad in law;

(vii) That the way the deceased was executed in a pre planned manner, had left serious repercussion in the society and release of the respondent from jail had affected the social fabric of the society and as such, the bail order is legally infirm and liable to be set-aside;

5. Both the respondents/opposite parties have filed their Affidavit-in-oppositions. Respondent/opposite party No.2 Mokdom Ali stated that the allegations made in the FIR are false and baseless and that police has mistakenly registered the case against him. It is also stated that no illegality is

committed by granting bail to him by the learned Sessions Judge, Barpeta and after his release on bail there is no adverse remark against him from any quarter. It is also stated that in order to deny statutory bail the I.O. had hurriedly submitted charge sheet against him without collecting the FSL report. That, unless there is any compelling circumstance, bail once granted, cannot be cancelled. That there is no allegation of misusing liberty such as tampering with the evidence or threatening the witnesses nor there is any allegation of commission of any offences. Further, it is stated that the charge sheet has been submitted on 91st day of his arrest and as such he is entitled to default bail. Therefore, it is contended to dismiss the petition.

6. Respondent/opposite party No.3, Mohibul Hoque @ Moni stated that his name is not even named in the FIR and that he had no connection with the alleged offence and the I.O. had hurriedly completed investigation and submitted charge sheet without the FSL report and he has been implicated in the case mala-fidely and that confessional statement made before police is not admissible under section 25/26 of the Evidence Act. It is also stated that the ground mentioned in the petition are frivolous and without any legal basis. Referring two case laws (i) **Bhuri Bai vs. The State of Madhya Pradesh; 2022 LiveLaw(SC) 956** and (ii) **Bhagirath Judeja vs. State of Gujarat: (1984) 1 SCC 284,** it is stated that the power under section 439(2) Cr.P.C. has to be exercised with extreme care and circumspection and very cogent and overwhelming circumstances are, or ground has to be made out. It is further stated that the FIR is motivated and lodged only to settle the personal score and that he has been wrongly implicated only to take revenge and harass him. And therefore, it is contended to dismiss the petition.

7. The petitioner has filed his reply to the said affidavit-in-opposition denying

the statements and averments made therein and reiterating the grounds mention in the petition.

8. Mr. Kataki, the learned counsel for the petitioner has reiterated the ground mentioned in the petition for cancellation of the bail under section 439(2) Cr.P.C. However, the main ground, being canvassed by Mr. Kataki is that the learned trial court, while granting bail to the accused persons had taken irrelevant materials in to consideration and that it has not considered the nature and gravity of the offence. Mr. Kataki further submits that the Charge Sheet was submitted within 90 days and though FSL was not collected yet, the same is not relevant to establish the complicity of the accused persons. Mr. Kataki, also referred to a decision of Hon'ble Supreme Court in **Kanwar Singh Meena vs. State of Rajasthan and Another reported in (2012) 12 SCC 180,** support of his submission.

9. Whereas, Mr. D. Talukdar, the learned counsel for the respondent/opposite party No. 2 Mokdom Ali submits that the I.O. had failed to submit Charge Sheet within 90 days. And bail was granted to the accused on 29.06.2022 on 91st days. Mr. Talukdar, also submits that the accused had never misused his liberty after grant of bail and there is no allegation as such and therefore, it is contended to dismiss the petition.

10. On the other hand, Mr. Kamar submits that bail was granted to the accused Mahibul Hoque on 82nd day of his judicial custody and that there is no allegation of threatening the witnesses and no supervening circumstances occurred so as to cancel the bail of the accused. Mr. Kamar, also relied upon in the observation made by Hon'ble Supreme Court in para No. 10 in the case of **Kanwar Singh Meena** (supra). Mr. Kamar, therefore, contended to dismiss the

petition.

11. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the affidavit-in-opposition filed by the respondents/opposite party and the reply thereto filed by the petitioner. Also perused the scanned copy of the record of the learned Court below, carefully and the case laws, relied upon by both the parties.

12. Before directing a discussion into the issues raised in this petition it would be in the interest of justice to peruse some of the precedents presently occupying the field. In **Gurcharan Singh Vs. State (Delhi Administration)**, reported in **(1978) 1 SCC 118**, while dealing with the issue of cancellation of bail under section 439(2) Cr.P.C., Hon'ble Supreme Court clarified the position as under:

> "**Under Section 439(2) of the new Code, a High Courtmay commit a person released on bail under Chapter XXXIIIby any Court including the Court of Session to custody, if itthinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial, after anaccused person has been admitted to bail by the High Court.If, however, a Court of Session had admitted an accusedperson to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) tocommit the accused to custody. When, however, the State isaggrieved by the order of the Sessions Judge granting bailand there are no new circumstances that have cropped upexcept those already existed, it is futile for the State to movethe Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."**

13. Subsequent judgments have forward this discussion and differentiated between cases where cancellation of bail is sought on the basis of supervening circumstances, which arise from facts happening after the order granting bail was given, or facts which were not before the judge while passing order granting bail andcases where cancellation of bail is sought on the ground that order granting bail is illegal or perverse.

14. In **Raghubir Singh Vs. State of Bihar,** reported in **(1986) 4 SCC 481**, the Hon'ble Supreme Court held that bail can be cancelled where:

(i) the accused misuses his liberty by indulging in similar criminal activity,

(ii) Interferes with the course of investigation,

(iii) Attempts to tamper with evidence or witnesses,

(iv) Threatens witnesses or indulges in similar activities which would hamper smooth investigation,

(v) There is likelihood of his fleeing to another country,

(vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency,

(vii) attempts to place himself beyond the reach of his surety, etc.

15. In the case of **State of U.P. v. Amarmani Tripathi,** reported in **(2005) 8 SCC 21**, in para No.18, it is stated as under:-

"**18. It is well settled that the matters to be considered in 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 charge;

(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 tampered with; and

(viii) danger, of course, of justice being thwarted by grant of bail

16. In **Myakala Dharmarajam & Ors. vs. the State of Telangana & Anr. [(Criminal Appeal Nos. 1974-1975 of 2019) arising out of SLP (Crl.) Nos. 8882-8883 of 2019]**, Hon'ble Supreme Court held as under:

> **"It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."**

17. It is also held by the Hon'ble Supreme Court that these grounds are illustrative and not exhaustive. It must also be remembered thatrejection of bail stands on one footing but cancellation of bail is aharsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

18. In the case of **Neeru Yadav vs. State of Uttar Pradesh and another**, reported in **(2014) 16 SCC 508** Hon'ble Supreme Court, while setting aside an order granting bail observed:-

> "**The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his**

mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty.

But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

19. A three-Judge Bench of Hon'ble Supreme Court in **Dinesh M.N. (S.P.) v. State of Gujarat** reported in **(2008) 5 SCC 66,** held that - "where the Court admits the accused to bail by taking into consideration irrelevant materials and keeping out of consideration the relevant materials the order becomes vulnerable and such vulnerability warrants annulment of the order."

20. In the case of **Panchanan Mishra v. Digambar Mishra (2005) 3 SCC 143,** Hon'ble Supreme Court has held as under:-

"**The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime.... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."**

21. Again in the case of **Kanwar Singh Meena** (supra),so referred by

learned Advocates of both sides,Hon'ble Supreme Court has held as under:-

> "**10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. *But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.* Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."**

22. The proposition of law, which can be crystallized from the cases discussed herein above, is that courts which grants bail, can also withdraw the concession of bail, either on its own, or on the application preferred by the Police/Complainant/any other aggrieved person. But, the Courts exercise their

power of cancellation of bail with care and circumspection. Routinely, the Courts refuse to cancel bail, as it jeopardizes the personal liberty of the person. The Courts cancel bails only when they find on record a very cogent and overwhelming circumstances prevailing against the accused as held in the case of **Bhuri Bai** (supra) and **Bhagirath Judeja** (supra) as relied upon by the respondents/opposite party No.3.

23. Also the High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice and if relevant materials, indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, were ignored by the court granting bail. Those orders are against the well-recognised principles underlying the power to grant bail and the same are legally infirm and vulnerable leading to miscarriage of justice and even in absence of supervening circumstances, such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. notwithstanding.

24. Keeping the above principles, so laid down by the Hon'bleSupreme Court in mind, in connection with cancellation of bail, nowan endeavor will be made to examine the impugned order dated29.06.2022, passed by the learned Sessions Judge, Barpeta in Crl. Misc. Bail No. 403/2022 and whether granting of bail to the respondents/opposite part No. 2 and 3, is perverse and suffersfrom infirmities, and thereby, resulted in miscarriage of justice and whether there arises any supervening circumstances so as to interfere with the impugned order.

25. It is to be noted here that at the time of hearing, to a pointed query of this court, Mr. Kataki, learned counsel for the applicant, fairly submits that there

is no supervening circumstances herein this case and the bail granted to the respondents/opposite parties sought to be cancelled only on the ground that while granting bail the learned Sessions Judge had not taken into consideration existence of prima facie case and nature and gravity of the offence but, he has taken in to consideration irrelevant materials and thereby caused miscarriage of justice.

26. That, perusal of the scanned copy of the record of the learned court below, specially the FIR and the Charge Sheet, reveals following facts and circumstances:-

(i) Barpeta P.S. Case No. 338/2022, under section 341/302/34 IPC on the basis of an FIR lodged by the present petitioner.

(ii) The allegation made in the FIR is that on 21.03.2022,at about 7.30 pm while Rupjan Nessa, along with Rinima Begum, after visiting the Chamber of Doctor Binoy situated at Bilortari, were about to board on a vehicle, then one Mokdom Ali, Jumma @ Abdur Rahman and Chintu arrived at there in a Motor Cycle and then Mokdom Ali caught hold of Rupjan Nessa by her neck and then Jumma @ Abdur Rahman administered blow over her abdomen;

(iii) Thereafter, Chintu had taken Mokdom Ali and Jumma @ Abdur Rahman away from the place of occurrence in the said Motor Cycle.

(iv) It also appears that a Civil Case was pending before the court in connection with land dispute between the deceased Rinima Begum, who was a practicing lawyer of Barpeta court, and accused Mokdom Ali;

(v) It also appears that after completion of investigation, the I.O. had laid charge sheet against **both the respondent/opposite party** to stand trial in the court under sections 120B/302/201 IPC, along with one **Rakibul Islam**(absconder accused) and **Abbas Ali** and also along with accused **Mostab Ali,** under section 120(B)/302/201 IPC and against accused **Rubial Ali,** under section 120(B)/341/302/201 IPC and submitted final report against accused Abdur Rahman @ Jumma and Chintu @ Safiqur Rahman.

(vi) It also appears from the Charge Sheet that Accused Mokdom Ali had planned with Mohibul Hoque to eliminate Rinima Begum, having been annoyed with the litigation instituted by her and then Mohibul Hoque engaged his friend Rokibul Islam fixed the price at Rs.10,00,000/. Thereafter, Rakibul had engaged accused Mostab Ali and Abbas Ali to execute the plan.

(vii) Further, it appears that Rakibul Islam with Rubial Ali had killed Rinima Begum on 21.03.2022, at about 7.30 pm at Bilortari by means of a dagger and thereafter, managed to escape in a motor cycle and thereafter, thrown the dagger to the river Velengi;

(viii) After two days of execution, accused Mohibul Hoque had paid a sum of Rs. 3,50,000/ to Rafikul Islam;

27. The order dated 29.06.2022, being sought to be cancelled in this case, on the other hand indicates that the learned Sessions Judge had taken note of the followings:-

(i) Police did not submit charge sheet against the FIR name accused Jhuma @ Abdur Rahman and charge sheeted against accused

Mokdom Ali, Mohibul Hoque, Robial Ali, Mostab Ali, Rakibul Islam, Rafikul Islam and Abbas Ali;

(ii) Allegation against the charge sheeted accused Mokdom Ali and Mohibul Hoque is that they had hired other charge sheeted accused to commit murder of Rinima Begum and the other charge sheeted accused persons committed murder of Rinima begum as aforesaid;

(iii) But I.O. did not apprehend charge sheeted accused Rafikul Islam and shown him as absconder;

(iv) The I.O. could not submitted FSL report of the exhbit sent to FSL Kahilipara which does not make any sense;

(iv) To deprive the accused persons from availing default bail under section 167(2) Cr.P.C. the I.O. had submitted charge sheet within statutory period without completing investigation;

(v) It is uncertain when the learned Magistrate will be able to commit the case for trial as one of the accused is being charge sheeted as absconder and the other accused have to be detained in judicial custody waiting for execution of process against the absconder and therefore, the charge sheeted accused have to be detained for uncertain period which is against the mandate of Hon'ble Supreme Court that bail is the rule and jail is an exception;

28. In this context, the factors, which the courts required to take into account while granting bail is required to be discussed. In case of **Ram Govind Upadhyay vs. Sudarshan Singh,** reported in**(2002) 3 SCC 598,** Hon'ble Supreme Court has observed that grant of bail though discretionary in nature, yet, such exercise cannot be arbitrary, capricious and injudicious, for the

heinous nature of the crime warrants more caution and there is greater change of rejection of bail, though, however dependant on the factual matrix of the matter. In the said decision, reference was made to a decision of Hon'Ble Supreme Court in **Prahlad Singh Bhati vs. NCT of Delhi** reported in (2001) 4 SCC 280, wherein it has been opined as under :-

> "**(*a*) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.**
> **(*b*) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.**
> **(*c*) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.**
> **(*d*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."**

29. In **Chaman Lal v. State of U.P.** reported in **(2004) 7 SCC 525**, Hon'ble Supreme Court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge, which are to be kept in mind.

30. Again in the case of **Kalyan Chardra Sarkar vs. Rajesh Ranjan** reported in **(2004) 7 SCC 528,** Hon'ble Supreme Court has held as under:-

> "**The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life**

imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) 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 appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

31. Now, adverting to the facts here in this case, I find that admittedly, the learned Sessions Judge had not passed the order dated 29.06.2022, under section 167(2) Cr.P.C. And indisputably also the learned Sessions Judge had not discussed about existence of a prima facie case, the nature of accusation, the severity of punishment, apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court, as mandated by Hon'ble Supreme Court in the case of Prahlad **Singh Bhati** (supra) and **Chaman Lal** (supra).

32. On the other hand, it appears from the order, dated 29.06.2022, that the learned Sessions Judge had taken note of the irrelevant factors while granting bail to the respondent. The factors that have been taken note of are irrelevant in the context of involvement of accused with the offence alleged. Mr. Kataki, the learned counsel has rightly pointed this out during hearing and I find substance in the same.

33. The offences are indeed heinous in nature. The deceased Rinima begum was a practicing Lawyer of Barpeta. She was executed in a pre-planned manner, over a period of time, hiring professional killers. The enmity of accused Mokdom Ali with the deceased Rinima Begum is writ large from the factum of admitted pendency of a Civil Case between him and the deceased before the Civil Court. The motive for killing Rinima Begum is well discernible from the materials placed

on record. Though there in no direct threat to the family members of the petitioner, yet, a veil threat is always looming large in the mind of the family of the deceased that similar consequence may happen in their case also in view of the pendency of the Civil Case. The offence has serious impact upon the society.

34. Thus, examining the impugned order of granting bail by the learned Sessions Judge, Barpeta dated 29.06.2022, in Crl. Misc. Bail No. 403/2022, this court is of the view that the same failed withstand the test of legal scrutiny. The order suffers from serious infirmities resulting in miscarriage of justice. Relevant materials, indicating prima facie involvement of the accused and nature and gravity of the offence and the punishment prescribed for the same and also the societal interest, were ignored, instead, taken into account irrelevant materials such as non availability of FSL report with the charge sheet, failing to arrest accused Rafikul Islam and filing of charge-sheet without completion of investigation, which have no relevance to the question of grant of bail to the accused. The order granting bail to the respondent/opposite party No.2 and 3, having been passed in contravention to well establish jurisprudence of bail, who were involved in heinous crimes, their release ultimately results in weakening the prosecution case and the same also have adverse impact on the society. Therefore, the order of granting bail requires interference of this court, in view of the proposition of law laid down in the case of **Kanwar Singh Meena** (supra), notwithstanding absence of supervening circumstances, such as the propensity of the accused to tamper with the evidence, to flee from justice, etc.

35. The submission of Mr. Kamar and Mr. Talukdar received due consideration of this court. But, in view of manifest illegalities in granting bail to the respondents/opposite parties and in view of facts and circumstances on the record, this court is unable to record concurrence to the same. Though Mr.

Talukdar submits that charge sheet was submitted on 91st day of arrest of accused Mokdom Ali, yet, no default bail was granted to him by the learned Sessions Judge, Barpeta as there is no such indication in the order dated 29.06.2022. It appears from the record that charge sheet was submitted 20.06.2022. On that day no bail petition was pending before the learned Sessions Judge. The application for granting bail was filed on 24.06.2022 and therein also no prayer for granting default bail. Another disturbing fact, which came into light from the scanned copy of the record of learned trial court, is that an attempt was made to manipulate/tamper the date of arrest of the accused Mokdom Ali in the Arrest Memo. The date of arrest i.e. 23.03.2022 was erased and overwritten as 22.03.2022.

36. In the result, this application stands allowed. The impugned order of granting bail to the respondents/opposite parties by the learned Sessions Judge, Barpeta dated 29.06.2022, in Crl. Misc. Bail No. 403/2022, stands cancelled. The respondents shall surrender before the learned Sessions Judge, Barpeta forthwith. In the event of failure, step shall be taken to take them into custody.

37. It is to be noted here that the observation made herein above is only for the purpose of disposing of the present application not on merit of the case. The learned trial court shall proceed to hear the case without being influenced by any of the observation made herein above.

38. In terms of above this I.A. stands disposed of. The parties have to bear their own costs.

JUDGE

Comparing Assistant