
(2008) 10 GAU CK 0001
In the Gauhati High Court
Case No : Bail Application No. 156 of 2008

Bimal Das

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Arms Act, 1959 — Section 25(1), 27
National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 148, 149, 201, 302, 307

Citation : (2009) 2 GLR 35 : (2009) 1 GLT 587

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : P.K. Biswas, P. Majumdar and P. Sahu, for the Appellant; Public
Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—The instant application is filed by one Shri Bimal Das for bail of accused Shri Shyamal Das who was arrested on 23.5.2008 in connection with West Agartala PS Case No. 97/2008 under Sections 344/325/302, IPC, which was registered on the basis of an information lodged by one Sukuntala Banik, the mother of the deceased Biswajit Banik, who was the accused in West Agartala PS Case No. 89/08 u/s 380, IPC lodged by the wife of the present accused person.

2. The brief fact of the prosecution case is that one Smt. Sukuntala Banik lodged a written complaint on 20.5.2008 at about 1750 hours to the Officer-in-Charge of West Agartala Police Station to the effect that the accused Shyamal Das and his wife Smt. Soma Das were creating pressure upon her to transfer her residential hut for them and on 9.5.2008 at about 1.30 p.m. one Shri Nikhil Debnath, an associate of accused Shyamal Das carried her son with a motor bike towards Bapuji School and on that day at about 7.30 p.m., wife of the present accused, Shri Nikhil Debnath and Shri Bikash Debnath and others, entered into, her house and informed that a theft has been committed by her son in the house of the

present accused and they created pressure to bring out the golden ornaments which are the subject-matter of the theft and the same was done with a view to, create pressure to transfer the house and the articles kept in the house and on the following day, i.e., on 10.5.2008 the miscreants brought her son in the morning at about 7.30 a.m. and she noticed injuries on his face and neck and the accused, his wife and their associates assaulted her son to bring out their stolen articles and after half an hour they again took away her son somewhere else. It is further alleged that on 11.5.2008 in the morning at about 8 a.m. they again brought her son from unknown place and kept him in the front of the door of her house and due to assault her son was not in a position to talk properly. She further alleged that the present accused and his associates also assaulted her and threatened to bring out the stolen articles and at that time Shri Nikhil Debnath brought out a small chain and one ring from a packet made of paper and told that same was found in the pocket of her son and the above mentioned miscreants along with others assaulted her son. She also alleged that at about 1 p.m. they informed the police and on getting the said information, police came and took away her son and thereafter on Tuesday on getting information from the police, she went to GB Hospital, found her son admitted in the hospital and she noticed injuries over the whole body, face of her son and he was not in a position to speak properly and on 16.5.2008 at about 10.30 p.m., her son expired in the GB Hospital and it is alleged that due to the (sic) by the present accused and other miscreants whose names are mentioned in the complaint, her son expired and the Officer-in-Charge of the Police Station treated the said complaint as FIR and registered West Agartala PS Case No. 97/2008 under Sections 344/325/302, IPC. The accused was arrested on 23.5.2008 in connection with the aforesaid case and was produced before the Court of learned Chief Judicial Magistrate, West Tripura, Agartala on that day who rejected his bail prayer and remanded him to the police custody for five days. Thereafter, when the accused was produced before the learned court, the court remanded him to the jail custody by rejecting his bail prayer and since then the accused is in custody and by this time, the investigating agency has filed the charge sheet against the present accused along with others showing some of them as absconders.

3. Heard Mr. J.M. Choudhury, learned senior Counsel, assisted by Mr. P.K. Biswas, learned Counsel for the Petitioner and Mr. A. Ghosh, learned Addl. Public Prosecutor for the Respondent State.

4. Mr. Choudhury, learned senior Counsel for the Petitioner placing reliance on the forwarding report dated 12.5.2008 submitted by the Sub-Inspector of Police, Battala TOP before the learned Chief Judicial Magistrate, West Tripura in connection with West Agartala PS Case No. 89/08 submits that the deceased Biswajit was arrested for alleged theft of hard cash of Rs. 50,000 (approx.), gold ornaments, Laptop and other garments. He also heavily relied on the forwarding report to the effect, inter alia, in process of detaining by public the forwarded accused person SI. No. 1 received minor injuries on his person. He also placed

reliance on the order of the learned Chief Judicial Magistrate, West Tripura, Agartala dated 12.5.2008 wherein the learned CJM after perusing the medical report of the Medical Officer, IGM Hospital stated, inter alia, "Perused the medical report of Medical Officer of IGM Hospital. No external injury is mentioned in the report. Accused Biswajit Banik also being asked did not complain about any assault or bodily pain" and contended that from the aforesaid forwarding report and the order of the learned CJM, it is evident that the deceased was not assaulted by anybody including the present accused person and no prima facie case is made out against the accused u/s 302/34, IPC, at best a case u/s 323, IPC can be made out even if it is considered that the deceased who was the accused in West Agartala PS Case No. 89/08 sustained some minor injuries on his person as mentioned in the forwarding report. He also submits that the deceased was produced before the learned Chief Judicial Magistrate, West Tripura, Agartala on 12.5.2008 and he expired on 16.5.2008. Therefore, it cannot be said that his death was caused due to the alleged beating. He further submits that by this time charge sheet has been filed and there is no possibility of absconding of the present accused as there are some other cases against him which are pending before the court and he is appearing in those cases. His further submission is that since the charge sheet has already been filed, there is no question of tampering the evidences. Unless the accused is enlarged on bail, he will be deprived of defending his cases in the trial court.

5. Mr. Ghosh, learned Addl. Public Prosecutor while opposing the prayer for bail submits that the present accused is a criminal gangster in the locality and against him at least eight other cases are pending out of which in West Agartala PS Case No. 1123)/03 u/s 302, IPC, 34/05 under Sections 326/307/34, IPC, 36/06 under Sections 386/506, IPC and 168/05 under Sections 307/326/364/34, IPC and subsequently added Sections 302/201, IPC charge sheets have been filed and the cases are under trial and except the above case West Agartala PS Case No. 92/08 under Sections 365/325/34, IPC and East Agartala PS Case No. 77/07 under Sections 399/25(1)(a) of Arms Act are under investigation. Mr. Ghosh further submits that some of the accused involved in this case are on absconding and if the present accused is enlarged on bail then the witnesses will not open their mouth in the court as while he was free the witnesses were not coming with the evidences before the police. He placed reliance on some of the 161 statements of the witnesses and the post mortem report submitted by the Medical Officer to show that the deceased Biswajit died due to Acute Respiratory Distress Syndrome (ARDS) following blunt trauma over chest due to the injuries caused by the present accused person along with his other associates as they gave fist blows on his chest and also kicked on his belly which will be evident from the statement of the witnesses.

6. In response to the submission of Mr. Ghosh, Mr. Choudhury, learned senior Counsel for the Petitioner submits that from the medical report, it cannot be said that the cause of death of the deceased was the injuries caused by the accused person though he fairly submits that even if there was allegation against the

deceased regarding stealing of the properties of the accused person then also nobody has the right to kill him and in the instant case, the deceased was not killed by the present accused and mere allegation that the accused is a mafia and the people of that area is afraid of him cannot be a ground for refusal of his bail as the court is not going to decide the merit in a trial at this stage. Even if a prima facie case is established against the accused for facing trial that itself cannot be a ground for rejecting his prayer for bail. The court has to consider whether the present accused would readily be available for trial and there is any likelihood of tampering the evidences in view of the completion of the investigation, i.e., filing of charge sheet. He fairly submits that there are some cases where the court even after filing of the charge sheet did not grant bail considering the fact of those cases, but the instant one is not covered by one of those cases.

7. This Court has considered the parameters laid down by the Apex Court in the case of State Vs. Amarmani Tripathi, regarding granting of bail, wherein the Apex Court held in particular "that while considering the application for bail, what is required to be looked is, (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 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."

8. It appears from the records, particularly the charge sheet and the prayer of the Investigating Officer dated 16.8.2008 to the Court of learned Chief Judicial Magistrate that accused Shyamal Das is involved in the following cases (1) West Agartala PS Case No. 123/08 u/s 302, IPC, (2) West Agartala PS Case No. 34/04 u/s 148/149/427/326, IPC, (3) East Agartala PS Case No. 69/04 u/s 366, IPC, (4) West Agartala PS Case No. 39/05"under Section 326/397/34, IPC, (5) East Agartala PS Case No. 168/05 u/s 307/326/364/34, IPC and added Section 302/201, IPC and 27 Arms Act, (6) West Agartala PS Case No. 36/06 u/s 386/506(b)/34, IPC, (7) East Agartala PS Case No. 77/07 u/s 399 UPC/25(i)(A) Arms Act, (8) West Agartala PS Case NCN 92/08 u/s 365/325/34, IPC and (9) West Agartala PS Case No. 97/08 u/s 342/325/302, IPC. Besides the aforesaid cases, detention order u/s 3 of National Security Act, 1980 had been issued against him on 14.2.2006 and was executed on that day. As the present accused is involved in the aforesaid criminal cases it can easily be said that he is not a general offender of crime, but he is a habitual offender against whom three murder cases except the present one, two attempt to murder cases, other kidnapping cases and a case under the Arms Act are pending out of which in four cases charge sheet has already been filed and others are under investigation and out of those four cases in which charge sheet has been filed, in one case trial is going on. In that stage, the accused has been involved in another murder case.

It further Appears from the case diary that the people of the area were not in a position to disclose anything against him and his associates to the police before his arrest and there is also a likelihood of repeatedly committing offence if the accused is enlarged on bail as his previous character, behaviour, means and position in the society are not like a law abiding people and it cannot be ruled out that if he is enlarged on bail then he will threat the witnesses and also tamper the evidences.

9. There is no doubt that mere filing of charge sheet cannot be a ground for rejection of bail, but at the same time the court has to consider the fact that filing of charge sheet against an accused person makes out a prima facie case against him to the effect that the accused had committed the offence and court cannot also ignore the gravity of the, charge and severity of the punishment in the event of conviction of the accused after trial. Ordinarily, the court do not reject the bail when charge sheet is filed considering the fact that the accused has a right to defend himself in the trial. But there are some cases where granting of bail will frustrate the purpose of trial and also shaken the confidence of the witnesses as the accused may try to restrain them from disclosing the actual fact before the court. The court has to see the nature and character of the offence, the position of the accused person in the society and whether there would be any effect in the society if the accused is released on bail. If there is any possibility of affecting the society by the release of the accused on bail then the court should see the interest of the society and not the individual and it would be proper to proceed with the trial keeping the accused in custody. The case in hand is one of such type of cases where the trial should be conducted keeping the accused in custody.

10. This Court has restrained itself from making any observation on the merits of the cases pending against the accused.

11. For the aforesaid reasons and discussions, the prayer for bail is rejected.