

Misc. (Bail) Case No. 94 of 2021.

12.08.2021.

Seen Bail Petition No.408/21 filed by petitioner Bhanti Khatun u/s. 439 Cr.P.C in connection with Biswanath Chariali P.S. Case No.189/2021 u/s. 304 IPC praying for bail of accused Md. Hussain Ali on the grounds that the deceased is the younger brother of the informant namely Amit Engti was called by the accused person for repairing of electrical line at Solaikhati area. The deceased was a casual employee of electricity department and due to negligence of Electricity department, Pabhoi, the brother of the informant was died. In respect of the said incident the informant lodged an ejahar and police of Biswanath Chariali P.S. registered Biswanath Chariali P.S. Case No.189/2021 u/s. 302 IPC and arrested the accused on 23.06.2021. After completion of investigation police submitted charge sheet against the accused u/s.304(A) IPC and the offence u/s.304(A) IPC being bailable, the accused approached the learned Court of SDJM(M), Biswanath Chariali with an application for bail but the learned SDJM(M) after perusal of the materials submitted with the charge sheet, took cognizance u/s.304 IPC and rejected the bail prayer of the accused holding that the offence u/s.304 IPC is not bailable and exclusively triable by the Court of Sessions. The incident of death of the victim took place due to negligence of the APDCL but not for the accused. Accused is suffering from various diseases apart from getting operated twice earlier and he is an employee of APDCL and on the event of release on bail, there is no chance of absconding nor shall he tamper with the evidence of the case.

Heard the learned counsel for both sides.

Learned counsel representing the accused reiterating the grounds of bail petition submitted that charge sheet of the case is already submitted u/s.304(A) IPC and the said offence being bailable, a bail application has been moved before the learned SDJM but the learned SDJM has taken cognizance u/s.304 IPC and against the said order a revision petition would be moved by the accused but it would take some time whereas the accused is in jail hazot since 23.06.2021 and he is a diabetic patient. Hence, prayed for releasing the accused on bail on any conditions as deem fit and proper.

Learned Addl. P.P objecting the bail petition submitted that there is clear incrimination against the accused Hussain Ali in respect of commission of the alleged offence and the learned SDJM has taken cognizance u/s.304 IPC and the case is now posted for committal and at this juncture prayer of bail of the accused may be rejected.

Received the case record as called from the Court of learned SDJM(M), Biswanath Chariali.

Perused the case record and going through the same it appears that charge sheet has already been submitted in the case and the learned SDJM(M), Biswanath Chariali after taking cognizance u/s.304 IPC against the accused fixed the next date on 17.08.2021 for committal.

It is at bar that the accused called in the victim being casual employee of APDCL for repairing of Electricity fault and during repairing the victim has been electrocuted and died. So, prima facie case, nature and gravity of the charge and severity of the punishment in the event of conviction are apparent on the face of the record.

So far (i) danger of the accused absconding or fleeing, if released on bail, (ii) character, behaviour, means, position and standing of the accused, (iii) likelihood of the offence being repeated, (iv) reasonable apprehension of the witnesses being tampered with and (v) danger, of course, of justice being thwarted by grant of bail are concerned.

It is on record that the accused is an employee of APDCL and as such there would be very lesser possibility of absconding. Further LCR reveals that the accused has been arrested on 23.06.2021 and since then he is in jail hazot whereas charge sheet of the case has been submitted by the I/O after completion of the investigation.

Considering the above aspects of the matter and submissions of the learned counsel for both sides, prayer of bail of accused Hussain Ali is allowed. He is allowed to go on bail on furnishing bail bond of Rs.25,000/- each with two local sureties of like amount to the satisfaction of the learned SDJM(M), Biswanath Chariali with the following conditions:

- (a) that the accused person shall not commit an offence similar to the offence of which he is accused,
- (b) that the accused person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence, and
- (c) shall not leave the territorial jurisdiction of this Court without prior permission.
- (d) shall not make any contact directly or indirectly with the informant and other members of the family of the victim till completion of the trial.
- (e) shall attend the Court regularly until trial is completed.

Return the Case record along with a copy of this order to the learned SDJM(M), Biswanath Chariali.

With the above order this bail petition stands disposed of.