

Misc.(Crl) Case No. 215/2021**ORDER****05-08-2021**

Seen petition No. 739/2021 filed by Maino Narzary seeking bail for accused Gisai Narzary, in connection with Dhekiajuli PS case No. 260/2021 u/s 392 IPC r/w Section 27(2) Arms Act.

I have heard the learned lawyers appearing for both sides and also gone through the contents of the case diary received today.

Learned counsel appearing for the State submitted that it is a serious case of bank dacoity and looted more than Rs. 4,00,000/- (Rupees Four Lakh) in broad day light and there is credible materials against the accused in the case diary. Therefore, learned PP oppose the bail prayer.

On the other hand, learned counsel appearing for vociferously contended that accused has been apprehended by police on suspicion and there is no direct evidence against him. Moreover, police have not recovered any single penny from the accused person to substantiate that accused was involved in the commission of dacoity. Learned counsel for the accused further submitted that accused is a student and he passed Matriculation in the recently declared result and he has to take admission in College to pursue his dreams.

Having heard the learned counsels appearing for both sides and on careful perusal of the case diary, it transpires that a daring act of day light dacoity took place in the Central Bank of India, Sirajuli Branch on 10-05-2021 and looted Rs. 8,57,854/- (Rupees Eight Lakh Fifty Seven Thousand Eight Hundred Fifty Four)only at gun point. The act of the accused is hair raising as the accused shoot the security personnel with the AK-47 but fortunately he escaped unhurt, nevertheless, money were taken at gun point. Learned counsel appearing for the accused submitted that accused is student and innocent person. Case diary further reveals that 4/5 other culprits were also involved in the crime who are yet to be nab by the police.

On perusal of the case diary, it transpires that police registered the case against the accused u/s 392 IPC r/w Section 27(2) Arms Act and so far

accused spent 79 days in judicial custody since his date of arrest on 18-05-2021. So, accused is entitled to "default bail". Case diary further reveals that since 19-05-2021 no further investigation has been carried out to nab the other culprits involved in the case.

For the offence u/s 392 IPC maximum punishment prescribed is rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine; and, if the robbery be committed on the High Way between sunset and sunrise, the imprisonment may be extended to 14 years.

In case of the offence u/s 27(2) Arms Act maximum punishment prescribed for the offence is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

In the judgment passed in the Hon'ble Supreme Court in SPECIAL LEAVE TO APPEAL (CRIMINAL) NO(S). 2009 OF 2017 RAKESH KUMAR PAUL ...PETITIONER (S) Versus STATE OF ASSAM ... RESPONDENT (S) held as under:

"In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then [Section 167\(2\)\(a\)\(ii\)](#) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed."

Since, in the present case, imprisonment prescribed u/s 27(2) of Arms Act may extend to imprisonment for life and shall also be liable to fine. So, accused is not entitled to "default bail" under [Section 167\(2\)\(a\)\(ii\)](#) Cr.P.C.

In the present case, [Section 167\(2\)\(a\)\(i\)](#) of the Code is applicable in respect of accused Gisai Narzary.

Therefore, considering all the factors, this court is not inclined to grant bail to accused Gisai Narzary.

In the result, bail petition stands rejected.

Send back the case diary in seal cover.

Accordingly, the bail petition is disposed off.

Sessions Judge
Sonitpur, Tezpur