

THE HIGH COURT OF TRIPURA _A_G_A_R_T_A_L_A_

B.A. NO.03 OF 2016 along with B.A. NO.04 OF 2016

A) B.A. NO.03 OF 2016

Smt. Simita Chakraborty,
D/O. Sri Swapan Kanti Chakraborty,
Resident of Chanban, Sub-Division- Udaipur,
P.O & P.S – R.K. Pur,
District – Gomati.

At present residing at opposite side of Sanhati Club, in a rented house of Sri Subrata Nath of Krishnanagar, Agartala, Tripura West.

..... Petitioner.

By Advocates : Mr. A. C. Bhowmik, Sr. Advocate.
Mr. P.K. Biswas, Sr. Advocate.
Mr. A. Bhowmik, Advocate.
Mr. D.C. Roy, Advocate.
Ms. P. Dhar, Advocate.
Mr. A. Dey, Advocate.

- V e r s u s -

1. The State of Tripura,

Represented by its Secretary cum Commissioner,
Home Department, Government of Tripura,
Agartala, District-West Tripura.

..... Respondent.

By Advocate : Mr. A. Ghosh, P.P.

B) B.A. NO.04 OF 2016

Sri Dipak Saha,
S/o Late Birendralal Saha,
Resident of Kunjaban Township,
Quarter No. Type-IV/30,
P.S. New Capital Complex,
District- West Tripura.

..... Petitioner.

By Advocates : Mr. P.K. Biswas, Sr. Advocate.
Mr. P. Majumder, Advocate.

- V e r s u s -

1. The State of Tripura

..... Respondent.

By Advocate : Mr. A. Ghosh, P.P.

**B _ E _ F _ O _ R _ E _
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing and
pronouncement of judgment. : **30.01.2016**

Whether fit for reporting : **NO**

JUDGMENT & ORDER

By this judgment I propose to deal with two bail applications being B.A No.03 of 2016 and B.A. No.04 of 2016 since they both arise out of New Capital Complex Police Station Case No.053 of 2015, dated 17.08.2015, registered under Sections 302, 120-B, 109, 201 of I.P.C.

[2] The brief facts leading to the lodging of the FIR are that Smt. Santa Saha, wife of the accused petitioner Dipak Saha in B.A. No.04 of 2016 was murdered on 17.08.2015 at about 11:45 a.m. The FIR was lodged by Dipak Saha in which he alleged that his wife Smt. Santa Saha was brutally murdered by some unknown miscreants at about 11:45 a.m on 17.08.2015 when she was alone in the Government allotted accommodation at Shyamali Bazar. Santa Saha deceased had received 5 to 6 blows of a sharp cutting weapon.

[3] In the said FIR it was stated that the petitioner is employed with the Police Department and left for his office at 10:30 a.m. According to him, his son Dipjoy Saha and Bitanjoy Saha had also gone out of the house in connection with their work. His younger

son Bitanjoy Saha returned and saw the deceased Santa Saha lying on the floor and rushed the body to AGMC & GBP Hospital where she was declared dead. In the FIR the petitioner accused has expressed the apprehension that the in-laws of his elder son Dipjoy Saha may have committed the crime. On the basis of this complaint the FIR was registered. The police investigated the case and at this stage this Court is not going into the merits of the case.

[4] The prosecution story is that Dipjoy Saha, son of deceased Santa Saha had an illicit relationship with his first cousin Smt. Simita Chakraborty (petitioner in B.A No.03 of 2016) who is an Advocate. The case of the prosecution is that Santa Saha was totally opposed to the liaison between her son Dipjoy Saha and her niece Simita Chakraborty. She forced her son to marry another lady.

[5] According to the prosecution's version, Dipjoy Saha and his paramour Simita Chakraborty along with Bitanjoy Saha and Dipak Saha conspired to kill Santa Saha. Thereafter, according to the prosecution Dipjoy Saha had hired two other accused Krishna Dey and Ranbir Lodh to murder his mother and Santa Saha was murdered by these two persons at the instance of Dipjoy Saha and the others.

[6] In these two bail applications I am only concerned with the role of the accused petitioners Simita Chakraborty and Dipak Saha.

[7] As far as Dipak Saha is concerned, virtually the only allegation against him is that he tried to mislead the police by stating in the FIR that he suspected the in-laws of his son Dipjoy Saha to be

involved in the murder of his wife. Here it would be pertinent to mention that it is also alleged that this FIR was scribed by accused petitioner Simita Chakraborty. Even if this version of the prosecution is accepted to be correct at this stage it cannot be said with certainty that there is conspiracy between the accused petitioner Dipak Saha and his son.

[8] I fail to understand why a father would conspire with the son to murder his wife when the allegation is that the wife was annoyed with the son. There is virtually no evidence to show that the relations between Santa Saha deceased and Dipak Saha were not cordial or were strained.

[9] I have carefully gone through the case diary and I find no other evidence which would lead to the conclusion that Dipak Saha is definitely linked with the offence. This will have to be decided by the trial Court after recording evidence.

[10] The accused petitioner Dipak Saha is a Government servant. He has a permanent abode in Agartala and there is no chance of his absconding. The investigation is also virtually complete and I see no reason why he should not be enlarged on bail. It is true that normally in a case of murder this Court is reluctant to grant bail but as observed by me above *prima facie* I find very little evidence to show that the petitioner Dipak Saha has any direct connection with the offence of murder.

[11] Coming to the case of Simita Chakraborty, the prosecution has placed on record a lot of evidence to show that she was in an illicit relationship with her cousin Dipjoy Saha. The police,

during the course of the investigation has gathered a large amount of evidence in the form of telephonic conversions, messages, and whatsapp communications which clearly indicate that there was a love affair between Dipjoy Saha and Simita Chakraborty. Other than drawing inferences from her conversions with Dipjoy Saha there is no direct evidence to show that she has abetted or conspired him of committing a crime.

[12] Merely because Simita Chakraborty had an affair with Dipjoy Saha is not sufficient to hold that she instigated him to murder the deceased. Some of the conversions especially on Whatsapp does indicate that Simita Chakraborty was worried and kept asking Dipjoy Saha what would happen to her relationship and he would keep assuring her that things would improve. She may be guilty of lesser offences but *prima facie* I am of the view that at this stage it cannot be said with certainty she is guilty of having committed an offence under Section 302. She is a practicing Advocate and has a permanent abode at Agartala. The investigation of the case is complete and charge sheet has been filed. The two petitioners Simita Chakraborty and Dipak Saha may or may not be involved as co-conspirator or abettor. This is for the trial Court to decide. However, their custody is no longer required. As observed above, there is no direct evidence to show that they conspired with Dipjoy Saha or that they hired the two killers.

[13] Simita Chakraborty was arrested on 05.11.2015 and Dipak Saha was arrested on 28.10.2015. Investigation is complete and charge sheet has been filed. There is no chance of these two

accused absconding and, therefore, the accused persons namely Simita Chakraborty and Dipak Saha are directed to be enlarged on bail on each of them furnishing bail bond in the sum of **Rs.50,000/-** (rupees fifty thousand) with two sureties each in the like amount to the satisfaction of the learned trial Court on the following conditions:-

(i) That, the accused persons are directed not to tamper with or in any manner influence the prosecution witnesses;

(ii) That, the accused persons shall ensure that no threat directly or indirectly are given to any of the prosecution witnesses;

(iii) The accused persons shall not leave Tripura without permission of the trial Court;

(iv) The accused persons shall appear before the trial Court on each and every date of hearing. In case, they absent themselves on any date, then the trial Court shall cancel the bail and the accused persons shall be arrested. Thereafter, the said persons shall have to approach this Court for grant of bail;

(v) In case, the accused persons violates any of the conditions or tries to delay the trial, the prosecution shall be at liberty to apply for cancellation of bail.

Bail has been granted vide separate order of date today.

On the petitioners filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioners during the course of the day.

CHIEF JUSTICE

Dipesh