

GAHC040004362023



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

Case No. : IA(Crl) 29/2023

1:Tamar @ Chikmar Malling
S/o Lt. Tachik Malling
R/o Pillong Maling Village
PO and PS Dumporijo
District Upper Subansiri
AP

VERSUS

1:THE STATE OF AP and Anr.
Represented through the Id. Public Prosecutor.

2:Yadik Nungnu
D/o Sh. Talen Nungnu R/o Nungnu Village
PO and PS Taliha
Upper Subansiri District
Arunachal Pradesh.

Advocate for the Petitioner : Rajesh Sonar
Advocate for the Respondent : P P of AP

Crl.A. 13/2023

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Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 26.06.2023

1. Heard Mr. S. Sonar, learned counsel for the applicant. Also heard Mr. T. Ete, learned Public Prosecutor for the State of Arunachal Pradesh representing the State respondents.
2. The present application is filed under Section 389 of the Code of Criminal Procedure, 1973, praying for the release of the applicant/accused on bail/and for suspension of the impugned judgment dated 05.09.2022 passed by the learned Additional Session Judge, Basar, Leparada District, in BSR/Session Case No. 01/2020, whereby the appellant was convicted under Section 376(1) of the Indian Penal Code, 1860 and was sentenced to undergo 07 (seven) years rigorous imprisonment with a fine of Rs. 2,000/- and in default of the payment of the fine, to further undergo simple imprisonment for one month.
3. While pressing the application, the learned counsel for the applicant submits:-

- I. That the FIR in the present case was lodged on 16.11.2017 whereas, the offence was allegedly committed on 27.10.2017 i.e. almost after one month.
- II. There were vital improvements and discrepancies in statement of the victim in her statement recorded under Section 164 of Cr.P.C. as well as in her deposition before the learned trial Court below.
- III. The medical evidence clearly shows that there is no sign of any sexual attack on the victim. Therefore, prima facie, the applicant is entitled for acquittal and therefore, he should be granted privilege of bail.

4. Considered the above submission, the fact narrated in the FIR discloses that on the date of alleged incident i.e. on 27.10.2017 when the victim was alone, the accused called her repeatedly as "sister" and the victim thinking him to be her clan brother went to his room and to ascertain the reason for calling her five times. However, as soon she entered his room, the accused locked the room and forcefully committed rape upon her.

5. During her statement recorded under Section 164 Cr.P.C. she also deposed in the similar line and further deposed that the accused asked her to take off her clothes and he also threatened to beat her, if she did not take off her clothes and accordingly out of scare she put off her dress. Thereafter she detailed the incidence how the accused committed the offence. She also stated that her elder sister started knocking the door and the accused asked her to quickly wear the dress and go inside the bathroom, but according to her she did not go. The accused pushed her inside the bathroom and locked the bathroom from outside. It is her statement that her sister enquired about her and started

to search for her. The then victim, she banged the door of the bathroom and was crying loud. Hearing her cry, her sister opened the door of the bathroom. Thus, she was got rescued.

6. During the deposition recorded before the trial court during trial, she deposed in the similar line, however, before the Court, she deposed that her cousin sister opened the door of the bathroom where she was kept hidden.

7. The learned counsel thus contends such discrepancies to be an improvement between the statement of the victim recorded under Section 164 Cr.P.C. and her deposition before the learned court below. This court is of the considered opinion that such discrepancies cannot be termed to be material improvement vitally affecting the case of the victim alleging rape.

8. The argument of the learned counsel referring to the deposition of PW1 that she started beating the victim itself suggest that it was not a case of rape otherwise the sister could not have beaten up the victim and therefore, such evidence itself cast a doubt upon the story of rape depicted by the victim also don't find favour of this Court as such act of PW-1 shall not be a basis to have a conclusion to rule out rape.

9. The further argument of the learned counsel that the FIR was lodged at very belatedly, is also not accepted for the purpose of grant of bail inasmuch as in the FIR itself, the case of delay was explained.

10. Coming to the argument of the learned counsel regarding the medical evidence, from the record it is seen that the Doctor has explained that as the victim was examined after a month of the alleged rape, therefore, no finding regarding rape could be recorded.

11. Considering the above, this Court is of the opinion that this is not a fit

case to grant of bail to the accused person at this stage. Accordingly, the present application stands dismissed.

12. However, while parting with the record, it is made clear that the observations made in the present application is for the purpose of consideration of the present bail application and same shall not influence while taking the appeal on merit.

Accordingly, with the aforesaid observation, this present application stands dismissed.

JUDGE

Comparing Assistant