

GAHC010014572023



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

Case No. : AB/215/2023

TAPASH KUMAR RAY@ RUPAM
S/O TRIBESH CH. RAY
VILL- UTTARBAN
P.S. GOLAKGANJ
DIST. DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S H SIKDAR

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

23.02.2023

1. Heard Mr. S.H. Sikdar, learned counsel appearing for the petitioner as well as Mr. B.B. Gogoi, learned Addl. P.P. appearing for the State respondent.
2. The petitioner, namely, Tapash Kumar Ray @ Rupam has filed this application under Section 438 Cr.P.C with prayer for pre-arrest bail as he is apprehending arrest in connection

with Golakganj P.S. Case No. 464/2022, under Sections 376/417/294 IPC.

3. I have considered the submissions at the Bar.

4. The FIR unfolds that the informant 'X' was having a relationship with the petitioner for five years. The petitioner promised to marry her and induced 'X' into having physical relationship with him on several occasions. On 15.12.2022, at around 4.00 a.m., the petitioner with false promise to marry her took her to his house and thereafter, he himself left the house. Then, the other family members of the petitioner assaulted her and drove her out of the house.

5. The learned Addl. P.P. has raised serious objection stating that Section 376 IPC is attracted in this case as the petitioner induced the victim into consenting to sexual relationship with false promises of marriage. The learned Addl. P.P. has relied on relation of the Hon'ble Supreme Court in **Pramod Suryabhan Pawar Vs. State of Maharashtra and another (2019) 9 SCC 608**, wherein, it has been observed that:-

“Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said Act.”

6. It is also submitted that there are cogent materials against the petitioner. The statement of the victim under Section 164 Cr.P.C incriminates the petitioner.

7. The learned counsel for the petitioner has relied on relation of the Hon'ble Supreme Court in **Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and Another (2021) SCC Online SC 181**, wherein, it has been observed that in a case similar to the instant case, the charge-sheet was quashed as per Section 482 Cr.P.C. The case of **Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and Another** (supra) was that:-

“After a lapse of about a year and a half, the appellant is stated to have gone back to his

home town which is Jhansi on 5 January 2018 and made a phone call to the second respondent that, since he wishes to perform a "court marriage", the second respondent may come to Jhansi. This was on the ground that the appellant could not travel to Mathura where the second respondent lived. The second respondent has alleged that she proceeded to Jhansi, but on reaching the residence of the appellant, she was informed by the father of the appellant that the appellant does not wish to marry her. The appellant's father also stated that the appellant did not desire to meet her and further asked her to take some money and leave from there. The FIR further records that the second respondent was assaulted by the appellant's sister and thrown out of the appellant's house."

8. “ In Sonu alias Subhash Kumar (supra), it was further held that:-“ *there is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."*

9. Reverting back to this case, my opinion is that we are considering a bail petition at the stage of investigation. The victim has refused medical examination. The nitty gritty of the evidence garnered by the investigating agency is not brought to the fore. At this stage, it is also not discernible if the petitioner had the intention to deceive the victim from the beginning of their relationship. The petitioner has denied the allegations. I have also perused the case diary and the statements of the witnesses under Section 161 Cr.P.C. The petitioner has already appeared before the I/O and his statement has already been recorded.

10. The petitioner is a Government employee and he is not a flight risk and there is no antecedent of earlier criminal incident against the petitioner.

11. The interim order dated 25.01.2023 is hereby made absolute. In addition, the petitioner shall furnish a bail bond of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the arresting authority.

Send back the case diary.

JUDGE

Comparing Assistant