

GAHC010016442023



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

Case No. : AB/252/2023

MAJIBAR RAHMAN
S/O JOYNAL SK
R/O VILL- JOGIRMAHAL PT.II,
P.O. BARKANDA
P.S. BILASIPARA
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 01-02-2023

Heard Mr. M.I. Hussain, learned counsel for the petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Majibar Rahman has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Bilasipara Police Station Case no. 314/2022, registered for offence punishable under Section 376D, Indian Penal Code [IPC] for the second occasion after rejection of his earlier bail application, A.B. no. 3641/2022 by an order dated 15.12.2022 after perusal of the materials in the case diary.

3. The First Information Report [FIR] was lodged by the informant on 27.09.2022 before the In-Charge, Nayahat Out Post, District - Dhubri alleging commission of gang rape upon her at around 10-30 p.m. on 25.09.2022 by the petitioner along with another accused person named Aminul Hoque, by intruding into her house. The said FIR was registered vide G.D. Entry no. 492 dated 26.09.2022 by the In-Charge, Nayahat Out Post and after forwarding the said FIR to the Officer In-Charge, Bilasipara Police Station, the In-Charge, Nayahat Out Post carried out investigation of the case. On receipt of the FIR, the Officer In-Charge, Bilasipara Police Station has registered the same as Bilasipara Police Station Case no. 314/2022 for the offence under Section 376D, IPC on 27.09.2022.

4. Mr. Hussain, learned counsel for the petitioner has submitted that the instant application has been preferred on the premise that the petitioner is suffering from pain in abdomen and back for which his treatment is presently going on at Bilasipara Model Hospital. In support of his such submission, he has referred to a medical certificate issued by the Medical & Health Officer, Bilasipara Model Hospital [C.H.C.] on 06.01.2023.

5. When the previous bail application, A.B. no. 3641/2022 came up for consideration before this Court on 15.12.2022, the learned Additional Public

Prosecutor appearing for the respondent State of Assam produced the concerned case diary on that day. The Court upon perusal of the materials available in the case diary, so produced on that date, had rejected the prayer for pre-arrest bail by order dated 15.12.2022. The relevant excerpts of the order dated 15.12.2022 read as under :

“4. In the case diary produced by the learned Additional Public Prosecutor, the statements of the informant recorded under Section 161, CrPC and Section 164, CrPC are available. In her statements, the informant has specifically implicated both the petitioners for committing forceful sexual assault on her by entering into her house together. There are eye witnesses accounts which go to corroborate the version of the informant in that the two petitioners were seen running out from the house of the informant in the night hours of 25.09.2022. Though the medical report do not indicate either in the affirmative or otherwise regarding the alleged commission of rape, I am not persuaded to reach a finding that only for that reason, the other incriminating materials including the statements of the informant and witnesses can be rightly discarded.

5. Though the learned counsel for the petitioners have submitted that there was a delay of one day in lodging the FIR, this Court is of the view that the same do not go to assist the case of the petitioner in any manner where the allegation of committing forceful gang rape is concerned.

6. Having regard to the incriminating materials available in the case diary, this Court is of the view that the benefit of pre-arrest bail under Section 438, CrPC cannot be extended to the two petitioners herein. Consequently, both the applications, A.B. no. 3641/2022 and A.B. no. 3513/2022 are dismissed.”

6. A perusal of the medical certificate dated 06.01.2023 goes to indicate that the certificate has been issued on the ground that the petitioner is suffering from pain in abdomen and back and he would need further treatment.

7. Having regard to the incriminating materials against the petitioner in the case diary, the Court had already declined the prayer for pre-arrest bail in respect of the petitioner on 15.12.2022. It is settled that after rejection of

application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 15.12.2022 passed in A.B. no. 3641/2022.

8. The ground on which the present application has been preferred renewing the prayer for pre-arrest bail, in the opinion of the Court, is not found to be sufficient for re-consideration of the earlier order dated 15.12.2022 for pre-arrest bail anew. The instant application for pre-arrest bail, preferred for the second occasion, is found to be lacking in merit and is accordingly dismissed.

JUDGE

Comparing Assistant