

GAHC010024232023



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

Case No. : AB/391/2023

SAIDUL ISLAM

S/O- ATOWAR MONDOL, VILL.- NO. 3 BAGHMARA CHAR, P.O. BAGHMARA
CHAR, P.S. ALOPATI CHAR, DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM

REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 31-03-2023

- 1.** Heard Mr. S.H. Rahman, learned counsel for the petitioner Saidul Islam.
- 2.** The petitioner has filed an application under Section 438 Cr.PC with prayer for pre-arrest bail as he is apprehending arrest in connection with Alopatis Char P.S. Case No. 52/2022 under Section 302 IPC.
- 3.** Heard Mr. B.B. Gogoi, learned Addl. P.P. for State.
- 4.** I have considered the submissions at the Bar. I have also perused the Case Diary.
- 5.** It is submitted on behalf of the petitioner that the petitioner was granted bail on

12.09.2022 in connection with Alopati Char P.S. Case No. 44/2022 under Sections 448/365/34 IPC. The bail order is marked as Annexure-3. On 13.09.2022, the petitioner was released from the jail after furnishing the required bail bonds. It is submitted that the petitioner was released at 8:30 PM from the jail and by the time he reached his maternal grand-father's home it was midnight. It is not possible that the petitioner is involved in the present case. The petitioner is apprehending arrest because the victim committed suicide near his house. The petitioner was in fact in his grand father's house at the time of the incident. The victim is the informant's sister. The earlier case being Alopati Char P.S. Case No. 44/2022 was lodged against the same petitioner with allegation of kidnapping the victim.

6. The FIR unfolds that after the petitioner was released on bail in connection with Alopati P.S. Case No. 44/2022 the victim was found missing from her house in the morning of 14.09.2022. After a frantic search, the victim's body was found hanging under a tree near the petitioner's house. It is submitted that the petitioner cannot be involved with the victim's death because he was in his grand-father's house at the time of the incident.

6. The learned Addl. P.P. has raised objection stating that the statements of the witnesses under Section 161 Cr.PC incriminate the petitioner, though under suspicion. There is no direct evidence that the petitioner was seen near the victim's house. It is also submitted that the Post Mortem Report reveals that death is opined to be *ante mortem* hanging but injuries were detected on the victim's body rendering her death suspect.

7. I have also scrutinised the Case Diary. There are indeed incriminating materials against the petitioner. The offence alleged is of heinous nature and the allegation is directly made against the petitioner though under suspicion. Investigation is still under progress. At this juncture there appears to be no justified ground to extend the privilege of anticipatory bail to the petitioner.

Petition is rejected.

Send back the Case Diary.

JUDGE

Comparing Assistant