

GAHC010026762023



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

Case No. : AB/448/2023

ZAKIR HUSSAIN TALUKDAR@ZAKIR HUSSAIN
S/O AKBAR ALI @ KALA MIYA
R/O WARD NO. 1 DOBOKA TOWN, P.S. DOBOKA
DIST. NAGAON (ERSTWHILE HOJAI), ASSAM, PIN-782440

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

13.03.2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel assisted by Mr. F.A. Hassan, learned counsel for the applicant, and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the Doboka P. S. Case No.299/2022, under Sections 448/376-C of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Zakir Hussain Talukdar @ Zakir Hussain, for grant of pre-arrest bail.

3. The said case has been registered on the basis of an F.I.R., lodged by Smti 'X' (name withheld) on 15.11.2022, to the effect that she was working as a Ward Girl in the Doboka Life Care Hospital and about seven months back, applicant Zakir Hussain Talukdar entered into her rented house and under threat, committed sexual intercourse with her and also prepared video of the said act and thereafter, he used to continue with such sexual activities with her, by threatening that he will make the video viral and also he will show it to her husband and when the local people came to know about the same, the accused threatened her to leave the job, by taking money, else threatened to kill her.

4. Mr. Choudhury, learned Senior Counsel submits that this is the second bail application and the first one was rejected by this court vide order dated 15.12.2022, in AB No. 3464/2022, after perusing the case diary. Mr. Choudhury further submits that the fresh ground/change of circumstance, in filing this second application is that the first informant has the habit of lodging false acquisition against the reputed person of the locality and Nagaon Sadar PS Case No. 3103/202, under sections 342/376/506 of the IPC, and Nagaon Sadar PS Case No. 1418/2021, u/s 417/493/294/506/376/120B of the IPC are two such cases lodged by her and the present case is also a false case lodged by her with evil design and the same is also the outcome of political rivalry as the applicant of this case is an elected President of Gaon Panchayat and reputed person of the locality. Further, referring to a decision of Hon'ble Supreme Court in **Santosh Prasad @ Santosh Kumar vs. The State of Bihar**, reported in

2020 3 SCC 434, Mr. Choudhury submits that there are many contradictions in the version of the informant and in some of the FIR she has stated that she is a married lady having two children and she withhold such information in other FIRs and as such her version cannot be relied upon by this court, and that the applicant is ready to cooperate with the investigating agency and he will abide by any condition imposed by this court, and therefore, in the interest of justice Mr. Choudhury contended to allow this petition.

5. Per-contra Mr. Lahkar, learned Addl. P.P. has vehemently opposed the petition and submits that each case has to be decided by its own merit. Mr. Lahkar further submits that the case diary along with record of Nagaon Sadar PS Case No. 1418/2021, under sections 417/493/294/506/376/120B of the IPC and Nagaon Sadar PS Case No. 3103/2020, under sections 342/376/506 of the IPC have been received and after investigation police submitted charge sheet in Nagaon Sadar PS Case No. 1418/2021, under sections 417/493/294/506/376/120B of the IPC against the accused of that case. Mr. Lahkar also submits that the investigation in respect of Nagaon Sadar PS Case No. 3103/2020, under sections 342/376/506 of the IPC is still going on and that the IO has collected sufficient materials against the accused of that case and that the allegations are also serious in nature and as such, the submission, so advanced by Mr. Choudhury is not tenable and also the case law referred by Mr. Choudhury would not come into his aid and, and therefore, Mr. Lahkar contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary and Record of Nagaon Sadar PS Case No. 1418/2021 and Nagaon Sadar PS Case No. 3103/2020, produced before this

Court with the assistance of Mr. Lahkar, learned Additional Public Prosecutor and also gone through the case law referred by Mr. Choudhury, learned Senior Counsel for the applicant.

7. It appears that this court was pleased to dismiss the first anticipatory bail application, being AB No. 3464/2022, preferred by the applicant, vide order dated 15.12.2022, after perusing the case diary and having found sufficient materials collected against the applicant. Though Mr. Choudhury, learned Senior Counsel for the applicant submits that the applicant has the habit of lodging false allegation against the reputed person of the locality and the present case is also the outcome of such a design and also of political rivalry, yet, the said argument appears to be unsustainable and this court is left unimpressed by such submission in view of the fact that the IO has already completed investigation in Nagaon Sadar PS Case No. 1418/2021, and submitted charge sheet under sections 417/493/494/506/376/21[B] of the IPC and though charge sheet is not submitted in the case of Nagaon Sadar PS Case No. 3103/2020, under sections 342/376/506 of the IPC. Yet, it appears that the I.O. has collected sufficient materials against the accused of that case.

8. Though referring to the case of **Santosh Prasad @ Santosh Kumar** [Supra], Mr. Choudhury submits that the version of the first informant cannot be relied upon as there are many inconsistencies therein and that the applicant is a reputed person of the locality and he is the elected president of Gaon Panchayat and out of political rivalry the said case has been lodged against him falsely, yet, the materials collected so far in the case diary of Doboka PS Case No. 299/2022, this court finds no substance in the same and there is no material in the case diary to suggest that out of political rivalry the first information has been lodged. As the investigation is still going on and the materials are being

collected against the applicant, this court is of the view that this is not the stage to consider the falsity or otherwise of the statement of the victim woman and as such, the observation made in the case of **Santosh Prasad @ Santosh Kumar** [Supra], to the considered opinion of this court would not come into the aid of the applicant.

9. In view of above, this court is of the view that the grounds so assigned are neither tenable nor justified for entertaining this second application. Another disturbing aspect, which is apparent from the case diary, is that the applicant has taken the signature of the first informant in a blank stamp paper for getting her married and thereafter, prepared an affidavit in the name of the first informant to the effect that she wish to withdraw the case and thereafter, filed it at the Police Station, which the first informant has vehemently denied filing such an affidavit.

10. Having regards to above and also having regards to the nature and gravity of the offence and the punishment prescribed for the same, and balancing the right of the applicant with that of the first informant/victim as well as the societal interest, this court is not inclined to extend the privilege of pre-arrest to the applicant and accordingly, the petition stands dismissed.

11. The case diary and the case record be returned forthwith to the learned court below.

JUDGE

Comparing Assistant