

GAHC010027802023



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

Case No. : AB/410/2023

BHAGABAN TALUKDAR
S/O- DINESH TALUKDAR, R/O- NIZ NAMATI, TIHU, P.S. TIHU, DIST.
NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. A DUTTA
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 15-03-2023

Heard Mr. A. Dutta, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Addl. P.P. for the State respondent.

2. This application under Section 438 Cr.P.C. is preferred by accused petitioner namely, Bhagaban Talukdar for grant of pre-arrest bail, who has been apprehending arrest in connection with Patacharkuchi P. S Case No. 36/2023 u/s 376/493/419 IPC.

3. I have considered the submissions at the Bar and I have perused the case diary

4. It is submitted by the learned counsel for the petitioner that FIR clearly reflects the conduct of the informant. The incident occurred on 7.11.2022 but the FIR was lodged on 2.2.2023 without explaining the inexplicable delay in preferring the FIR. Moreover, the informant herself called the petitioner to "Dreamland Dhaba". It is not possible for a person to commit rape on a woman in a Dhaba, which is a public place. This is the sole allegation of rape against the petitioner.

5. Admittedly, the petitioner was having a relationship with the informant. It is submitted at the Bar that the informant is a major and she had consensual relationship with the petitioner. The allegation of rape is relating to the incident on 17.11.2022 in "Dreamland Dhaba". It is also submitted on behalf of the petitioner that FIR itself reveals that after the alleged incident at the Dhaba, the petitioner dropped the informant at her uncle's place and discussions relating to petitioner's marriage with the informant had taken place. After 20 days the informant learnt that the petitioner restarted relationship with another woman. Finally on 25.11.2020 the petitioner had signed an agreement at Tihu police station to marry the informant but the petitioner has not married the informant as yet.

6. It is submitted by the learned P.P. that the statement of the informant u/s 164 Cr.P.C reveals that the petitioner has no intention to marry the informant.

7. It is submitted that the informant has speculated that the petitioner would not marry her and she lodged FIR with a serious allegation u/s 376 IPC. No case u/s 376 IPC is made out because there is no such allegation in the FIR that the petitioner had cheated the victim with false promises of marriage and has not married the informant. On the contrary the petitioner is not married till date and it cannot be held that the petitioner has cheated the victim and he

did not marry her.

8. It is submitted that the petitioner is willing to cooperate with the investigation. The petitioner is also a Government servant and he is not a flight risk.

9. In view of my foregoing discussions and considering all aspects, it is provided that in the event of arrest of the petitioner above named, in connection with the case aforementioned, he shall be released on furnishing bail bond of Rs.50,000/-, with a suitable surety of the like amount, to the satisfaction of arresting authority.

10. The direction for pre-arrest bail is subject to the conditions that the petitioner:

(a) shall appear before the Investigating Police Officer of concerned Police Station, within seven days from today and shall co-operate with the investigation;

(b) shall not hamper with the investigation or tamper with the evidence of the case;

(c) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

Sent back the case diary.

JUDGE

Comparing Assistant