

GAHC010028332023



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

Case No. : AB/405/2023

ILIAS @ ILIAS AHMED
S/O- NUR UDDIN, VILL.- BHELOWGURI, P.S. MOIRABARI, DIST.
MORIGAON, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

21.07.2023

Heard Mr. N. Uddin, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor, appearing for the State of Assam.

This is an application under section 438 of the Code of Criminal Procedure, filed by the petitioner, namely, Ilias @ Ilias Ahmed in connection with Moirabari

P.S. Case No. 356/2021 under section 365/368/376(D)/506 of the Indian Penal Code.

The accusation in this case is that on 02.09.2021, the victim lodged an FIR before the Officer-in-Charge of Moirabari Police Station, *inter-alia*, alleging that 11 (eleven) numbers of accused persons including the present petitioner committed gang rape on her forcefully. On receipt of the said FIR, the Moirabari P.S. Case No. 356/2021 was registered.

Learned counsel for the petitioner submits that the victim has lodged a false FIR as she has not explained the delay of 4(four) days from the day of incident in lodging the FIR.

It is also submitted by the learned counsel for the petitioner that the fact that the victim was not examined by doctor even after she was allegedly rape by 11 (eleven) persons itself raises suspicion on the story of the victim which is narrated in the FIR.

On the other hand, learned Additional Public Prosecutor has produced the case diary which includes the statement of the victim recorded under section 164 Cr.P.C. She submits that the present petitioner has been specifically implicated the victim herself and therefore, she opposes the grant of anticipatory bail to the present petitioner.

It appears from record that on 24.05.2023, the present petitioner was granted interim anticipatory bail by this Court with a direction to the present petitioner to appear before Investigating Officer within 10(ten) days from the date of the said order.

However, learned Additional Public Prosecutor submits that there is nothing in the case diary to suggest that the petitioner has appeared before Investigating Officer in pursuant to the direction of this Court.

I have considered the submissions made by learned counsel for both sides as well as perused the materials on record including the statement of the victim recorded under section 164 Cr.P.C. which is available in the case diary.

Considering the fact that there is nothing on record to show that the present petitioner has complied with the direction of this Court's and has appeared before the Investigating Officer in pursuant to the order dated 24.05.2023. Moreover, considering the specific incriminating materials against the present petitioner being involved in the heinous offence alleged against the informant in the FIR, this Court is of the considered opinion that the instant case is not a fit case to grant the benefit of a paneable order under section 438 Cr.P.C. to the present petitioner.

In view of above, the interim anticipatory bail granted to the present petitioner by order dated 24.05.2023 is hereby made cancelled and the instant bail application is dismissed.

Send back the case diary.

JUDGE

Comparing Assistant