

GAHC010032722023



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

Case No. : AB/479/2023

BABAR HUSSAIN @ BABOR ALI
S/O TUTA MIA,
VILL.-BAGHAN,
P.S.- BAZARICHERRA,
DIST.- KARIMGANJ, ASSAM.

VERSUS

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

Advocate for the Petitioner : MR F U BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

16.05.2023

Heard Mr F U Barbhuiya, learned counsel appearing for the petitioner and Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

2. By this application filed under Section 438 CrPC, the petitioner, Babar Hussain @ Babor Ali, has sought for pre-arrest bail, apprehending his arrest in connection with Bazaricherra PS Case No. 205/2022, under Sections 448/376/417 IPC.

3. Learned counsel for the petitioner submits that the petitioner is an auto-rickshaw

driver by profession and belongs to a very respectable family and he has never indulged in any criminal activities at any point of time. It is further submitted by the learned counsel for the petitioner that the informant and petitioner are residing in the same locality, i.e., at her paternal house and she is a married woman. The informant used to hire the auto-rickshaw of the petitioner, while going to appear in a maintenance case before the learned CJM Court and sometimes she paid the fare and sometimes did not pay the fare to him with the assurance that she would pay later on and an amount of Rs. 1,500/- became due, to be paid to the petitioner by the informant. On several occasions, the petitioner demanded for payment of the due amount, but the informant did not respond and thereafter, a quarrel took place between them, after which the aforesaid FIR has been lodged, out of grudge with false and concocted story. Learned counsel also submits that the informant was a consenting party, as such Section 376 IPC is not attracted here in this case. Other offences are bailable in nature. Therefore, the learned counsel submits that the privilege of pre-arrest bail may be extended to the petitioner.

4. Learned Additional Public Prosecutor has opposed the prayer for bail and submitted that there is direct allegation against the petitioner that he has committed rape with the victim due to which she became pregnant and delivered a child and subsequently he has left her on own fortune leading a life of destitution.

5. I have considered the submissions made by the learned counsel for both the parties. Perused the Case Diary, including the statement of the victim as well as the medical report, which is available in the record. .

6. From the medical report, it appears that the victim is pregnant.

7. In her statement recorded under Section 164 CrPC, she has stated that though she got married, but she subsequently used to stay in the house of her parents. The accused petitioner who is her neighbor, used to come to her house and on 10.03.2022, he came to her house when she was alone and forcefully committed rape upon her and thereafter, the accused petitioner frequently came to her house in the absence of her family

members and made physical relationship with her with a promise to marry her. Accordingly, after four months, she came to realize that she was pregnant. Though she informed the matter to the petitioner, he asked her to keep quiet and he left for Bangalore. Later on, the victim gave birth to a child.

7. Considering the facts and circumstances of the case and materials available in the Case Diary, this Court is of the opinion that the privilege of pre-arrest bail cannot be extended to the petitioner, at this stage.

8. Accordingly, the anticipatory bail application stands rejected.

9. With the aforesaid observations and directions this Anticipatory Bail Application stands disposed of.

10. Send back the Case Diary.

JUDGE

Comparing Assistant