

GAHC010056402023



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

Case No. : AB/1025/2023

ABDUL HAI SARKAR
S/O HAJI NABRUDDIN
R/O FALIMARI PART-II
P.S. DHUBRI
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 07-06-2023

- Heard Mr. H.R.A. Choudhury, learned Senior Counsel for the petitioner.
2. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.
3. By this application under section 438 Cr.P.C., the petitioner namely, Abdul Hai

Sarkar, is praying for pre-arrest bail, as he is apprehending arrest in connection with Dhubri P.S. Case No. 977/2019, under sections 376 (D)/395 of I.P.C.

4. I have considered the submission at bar, with circumspection. The bail prayer of the petitioner was earlier rejected vide order dated 09.02.2023 by this Court in connection with Case No. AB No. 209/2023. This subsequent petition for anticipatory bail is filed on a new ground.

5. It is submitted that accused No. 3 named in the FIR, Bellal Hoque has passed away on 11.02.2016 but he has been implicated as an accused with an offence of rape by the informant, which exposes the conduct of the informant. The ejahar was lodged by the informant on 05.06.2019, alleging that the accused person, Bellal Hoque, who died in the year 2016 and the other accused named in the FIR had committed gang rape upon the victim and looted an amount of Rs. 2,50,000/- and also gold ornaments by breaking the showcase which was kept in the house of the informant.

6. It is submitted that the F.I.R is false and fabricated. The death certificate of accused No. 3 is marked as Annexure-III, which reveals that Sri Bellal Hoque has passed away on 11.02.2016. The petitioner has also prayed for bail on the ground of parity as the co-accused were granted bail.

7. I have scrutinized the case diary. After considering the submissions at the bar and after scrutinizing the case diary as well as considering all other aspects, the petition is allowed.

8. In the event of arrest, the petitioner namely Abdul Hai Sarkar, shall be enlarged on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty Thousand) only with one suitable surety of like amount to the satisfaction of the arresting authority, in connection with Dhubri P.S. Case No. 977/2019, under sections 376 (D)/395 of I.P.C.

The bail is granted on the following conditions:

1. That the petitioner will appear before the I.O within 7 days from the date of this order;
2. that the petitioner will co-operate with the investigation;
3. that the petitioner shall refrain himself from such activities with which he is alleged; and
4. that the petitioner shall not leave the jurisdiction of trial Court without prior permission of the jurisdictional Court till completion of investigation.

Send back the case diary.

JUDGE

Comparing Assistant