

GAHC010056602023



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

Case No. : AB/985/2023

BABU (BARBAR) @ NABIJUR RAHMAN
S/O- NACHU UDDIN @ NASAR UDDIN, VILL- FALIMARI PART-II
(GORAMARA), P.O. FALIMARI, P.S. GAURIPUR, DIST.- DHUBRI, ASSAM,
PIN- 783325

VERSUS

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

Advocate for the Petitioner : MR Z HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 12.05.2023

Heard Mr Z Hussain, learned counsel appearing for the petitioner and Mr R R Kaushik, learned Additional Public Prosecutor for the State of Assam.

2. By this application filed under Section 438 CrPC, the petitioner, Babu (Barbar) @ Nabijur Rahman, has sought for pre-arrest bail, apprehending his arrest in connection with Dhubri PS Case No. 367 of 2017, registered under Sections 120 B/366-A/342/34

IPC.

3. Learned counsel for the petitioner has submitted that the victim is the sister-in-law of the accused. She had voluntarily accompanied the petitioner and subsequently, she was recovered and she got married with another person.
4. It is also submitted that the petitioner is a barber and an honest and a respectable person. The petitioner is presently residing in the district of Dhubri and he has never indulged himself in any criminal activities whatsoever at any point of time. So, bail may be granted to him imposing any condition(s).
5. On the other hand learned Additional Public Prosecutor submits that the statement of the victim was recorded under Section 164 CrPC, wherein she had admitted that she had voluntarily gone with the petitioner to watch the fair/mela. However, there is no medical report of the victim soon after the incident. After 3/4 years, she was examined by the doctor. Under such backdrop, the learned Additional Public Prosecutor submits that he has no objection if the petitioner is granted the privilege of pre-arrest bail.
6. I have heard the submissions made by the learned counsel for both the parties. I have also perused the Case Diary as well as statement of victim recorded under Section 164 CrPC.
7. In her statement recorded under Section 164 CrPC, the victim has stated that on 13.04.2017, at about 06:00 pm, when she was alone, one Babu came to her house and asked to accompany him to fair (mela). At first, she told him that she was not coming with him for watching the fair (mela), but later on she accompanied him to watch the fair (mela).
8. Section 366-A IPC reads as follows:-

366A. Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she

will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

9. On a bare perusal of the aforesaid provision, it reveals that to attract the provision under Section 366-A IPC, one has to induce a minor girl to go from any place with him for the purpose of forcing or seducing her to illicit intercourse. But here in this case, there is no complaint against the petitioner that he had induced the victim for the purpose of seducing her to illicit intercourse.

10. Regarding the age of the victim, the learned counsel for the petitioner submits that she is about 18 years of age when the incident took place. The learned Addl.P.P. has stated that as per school certificate, the victim was around 17 years of age at the time of incident. However, considering the background of the case, the learned Addl.P.P. has stated that it is a hairline case regarding age of the victim, so the prayer of the petitioner may be considered.

11. In view of the facts and circumstances of the case and having regard to the submissions made by the learned counsel for both the parties, this Court is of the opinion that the privilege of pre-arrest bail can be extended to the petitioner, Babu (Barbar) @ Nabijur Rahman. Accordingly, it is provided that in the event of arrest in connection with Dhubri PS Case No. 367 of 2017, the petitioner, namely, Babu (Barbar) @ Nabijur Rahman, shall be released on pre-arrest bail on executing a bond of Rs. 20,000/- (Rupees Twenty Thousand), with one surety of like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:

- (i) the petitioner is directed to appear before the Investigating Officer within a period of 10 (ten) days from today.
- (ii) that the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;

(iii) that the petitioner 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.

(iv) the petitioner shall not leave the jurisdiction of the Court, without prior permission of the Court. In case of violation of any of the above conditions by the petitioner, the learned Public Prosecutor is at liberty to move before this Court for cancellation of bail.

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

13. Send back the Case Diary.

JUDGE

Comparing Assistant