

GAHC010065012023



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

Case No. : AB/1106/2023

MD. ANTAN ALI
S/O- LATE HAKI SHEK, R/O- VILL- BARKANDA, P.S. BILASIPARA, IN THE
DISTRICT OF DHUBRI, ASSAM, PIN- 783348

VERSUS

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

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

24.03.2023

Heard Mr. J. Hatimuria, learned counsel for the petitioner and Ms. N. Das, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Antaz Ali has approached this Court seeking the benefit of pre-arrest bail,

apprehending his arrest, in connection with Bilasipara Police Station Case no. 326/2022, registered under Section 376, Indian Penal Code [IPC] for the second occasion after rejection of the petitioner's previous pre-arrest bail application, A.B. no. 3307/2022 by an order dated 15.12.2022 after perusal of the materials available in the case diary, produced on that date by the learned Additional Public Prosecutor.

3. As per the First Information Report [FIR] lodged on 12.10.2022, the petitioner had committed forceful rape upon the informant's daughter at around 07-00 p.m. on 04.10.2022 in the absence of any male member in the house. When the petitioner after committing the act, was going out of the informant's house, he was seen by the daughter-in-laws of the informant.

4. When the previous bail application, B.A. no. 3307/2022 was taken up for consideration on 15.12.2022, the learned Additional Public Prosecutor produced the concerned case diary. This Court upon perusal of the materials in the case diary, found that the victim was a hearing impaired person. The statement of the victim under Section 164, CrPC had to be recorded with the help of an interpreter. In her statement recorded under Section 164, CrPC, the victim had clearly implicated the petitioner for committing forceful rape upon her on a number of occasions. The Court had found that there were also eye-witnesses accounts, which had corroborated the version regarding commission of forceful rape upon the victim by the petitioner. Having found such incriminating materials against the petitioner in the case diary, this Court by order dated 15.12.2022 rejected the petitioner's previous pre-arrest bail application, A.B. no. 3307/2022.

5. In the second bail application, the petitioner has submitted that despite elapse of sufficient time period the Investigating Officer [I.O.] of the case has not yet filed any charge-sheet. It is further averred that the FIR was filed due to an ongoing boundary dispute between the two families and the FIR was lodged after a delay of 8 [eight] days from the date of alleged commission of rape.

6. It is settled that after rejection of application for pre-arrest bail under Section 438,

CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for re-consideration of the earlier order dated 15.12.2022 passed in A.B. no. 3307/2022.

7. This Court considered the grounds pleaded in the instant application, preferred for the second occasion, and has found not any good and sufficient reason for re-consideration of the earlier order dated 15.12.2022. Finding the instant application devoid of any merit, the application is rejected.

JUDGE

Comparing Assistant