

GAHC010067002023



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

Case No. : AB/1137/2023

MD. SURESH @ MD. SURAJ ALI
S/O SIRAJ ALI
VILL- BATAHGHULI, YUSUF NAGAR,
P.S. SATGAON
DIST. KAMRUP (M), GUWAHATI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S Z SHEIKH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 03.05.2023

Heard Mr. S. Z. Sheikh, learned counsel appears for the petitioner. Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor appearing for the State of Assam.

2. This Anticipatory bail petition has been filed by the petitioner, namely, Md. Suresh @ Md. Suraj Ali, apprehending arrest in connection with Satgaon Police Station Case No. 34/2023, under Section 448/376 of IPC.

3. The learned counsel for the petitioner submits that an FIR dated 05.02.2023 was lodged by the informant, one, Md. Abdul Hoque alleging that the accused person named in the FIR, who is the petitioner herein, had unauthorizedly entered into the house of the informant on 04.02.2023 at about 9.00 p.m and by gagging the mouth of his daughter had taken her away to a nearby house, where he committed rape on his daughter. On raising hue and cry by the victim, people of the nearby area gathered, however, taking advantage of the darkness, the petitioner fled away from the place.

4. Pursuant to the lodging of the FIR, the investigations were conducted and the petitioner apprehends that he will be taken into custody in connection with the aforementioned case.

5. Learned counsel for the petitioner submits that allegations in the FIR are false and nothing of that nature happened. On the contrary, he was not even present on the date of incident in the locality as alleged. It is submitted by the learned counsel for the petitioner that an amount Rs.20,000/- was lent to the elder daughter of the informant, which however was not returned back to the petitioner's sister. In order to get rid of their liability from the loan, the false FIR has been lodged against the petitioner.

6. This Court by earlier orders dated 28.03.2023 and 11.04.2023 had called for the Case Diary along with statement of the informant under Section 164 Cr.PC and the medical report.

7. Today, Mr. R. R. Kaushik, learned Additional Public Prosecutor has produced the case diary.

8. Case Diary produced has been carefully perused.

9. From the case diary, the statement made by the victim girl under Section 164 Cr.P.C is seen. The victim girl is aged about 31 years. In the statement there is an allegation that the petitioner had removed her wearing apparels but upon hue and cry raised by the victim girl the petitioner ran away. In so far as the medical report is concerned there was an endorsement by the medical expert on duty in the GMCH department of Forensic Medicine and Toxicology that the victim girl had refused to undergo medical examination after fully understanding the nature of such examination and consequence of such refusal.

10. After perusal of the case diary, it is seen that the investigations have been carried on and in the absence of any medical examination being conducted *prima facie* the allegations made against the petitioner in respect of the Section 376 IPC ingredients of which may not be available at the stage of investigation.

11. Under the circumstances, this Court is of the view that

prayer for grant of anticipatory bail by the petitioner can be allowed. Accordingly, it is directed that in the event of the arrest of the petitioner, in connection with the aforementioned case, he shall be released on furnishing a bail bond of Rs.25,000/- (Rupees twenty five thousand) only with one local surety of like amount to the satisfaction of the Arresting Authority. The bail granted, however, is subject to the following conditions:-

1. That the petitioner shall appear before the Investigating Officer within 10(ten) days from today and such other dates as required and co-operate in the investigation as and when required;
2. The petitioner shall not leave the jurisdiction of the police station, without prior written permission from Officer-in-Charge, Satgaon Police Station.
3. That the petitioner shall not hamper or tamper with the investigation in any manner; and
4. That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person/witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer in connection to this Police Station Case.

If any of the conditions are found to be violated by the petitioner then the Investigating Officer shall be at liberty to

seek cancellation of the interim bail granted to the petitioner.

12. Anticipatory bail petition is accordingly disposed of.

13. Return the Case Diary.

JUDGE

Comparing Assistant