

GAHC010075292023



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

Case No. : Bail Appln./1282/2023

SAIKH ANOWAR HUSSAIN
S/O ALAL UDDIN
R/O VILL- BHOIRARGHOL, CHAWALKHOWA, P.S. MOKALMUA
DIST. NALBARI, PIN-781310
PRESENT ADDRESS-
C/O MUSIN ALI
R/O GARIGAON, P.S. JALUKBARI,
DIST. KAMRUP (M), ASSAM, GUWAHATI-12.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR G U AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

19-04-2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel assisted by Mr. G.U.

Ahmed, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam and Mr. R.K. Das, learned counsel for the informant.

This Bail application has been filed by the petitioner, namely, Saikh Anowar Hussain, who is in custody since 28.03.2023 in connection with Bhangagarh P.S. Case No.83/2023 registered under Section 120(B)/498A/ 313 IPC.

Learned Senior Counsel for the petitioner submits that because of some misunderstanding the informant namely, Musstt. Minzuwara Khatun, who is the wife of the accused petitioner, had lodged the FIR against 7 (seven) number of accused persons. It is submitted that the allegations made in the FIR are totally incorrect and the petitioner did not resort to any of these allegations made in the FIR. Learned Senior Counsel for the petitioner further submits that the petitioner as well as the informant and the accused no.7 are all practicing advocates. It is alleged in the FIR that the petitioner after his marriage with the informant started behaving unnaturally and attempted to cause harassment on the informant. It is further alleged that the petitioner was responsible for causing miscarriage to the informant who was pregnant at the relevant point of time. That apart, one Sayed Nargiz Hafiza, one of the accused persons named in the FIR, had uploaded some personal photographs of the informant in the social media without her consent and further, demanded an amount of Rs.5,00,000/- (Rupees Five Lakhs). It is further alleged that the accused no. 2, 3, 4 & 6 telephonically informed the informant to bring Rs.5,00,000/- (Rupees Five Lakhs) and give it to the accused petitioner, the husband of the informant or any one of them in order to bring about an understanding between the accused petitioner and the informant. It is further alleged that the accused petitioner no.2, 3, & 4 are all close relatives of the accused petitioner. Further

allegation is that the accused petitioner has an "*illegal spouse*" over and above the informant.

Pursuant to the said FIR being registered as Bhangagarh P.S. Case No.83/2023 registered under Section 120(B)/498A/ 313 IPC, the petitioner was arrested on 28.03.2023 and he has been in custody since then. This Court had called for the case diary along with the medical report of the victim.

Today, Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam, has produced the case diary along with the medical report, which has been carefully perused.

The case diary reveals that the informant herself has refused to undergo any medical test. Consequently, the cause of alleged miscarriage could not be ascertained from the materials available at the case diary. From the case diary it appears that there was discord between the petitioner and the informant. The statements of the accused petitioner have been recorded by the Investigating Officer.

From the case diary it is seen that although the matter is under investigation and no charge-sheet has been filed, but the dispute is entirely between the informant and the accused no.1, i.e. the petitioner primarily. No materials are available in the case diary to suggest that release of the petitioner at this stage of investigation will cause impediment in the investigation carried out by the police.

Further it has been submitted that a talk of amicable settlement between the petitioner and the informant is going on as they are both husband and wife and accordingly, this Court is also of the view that the prayer for release of the petitioner on bail can be granted at this stage.

Considering the period of detention as well as the progress of the investigation and taking into consideration that no incriminating materials are available in the case diary to suggest that the release of the petitioner at this stage will affect the further investigation in the matter or that further custodial detention is necessary for investigation at this stage, this Court is, therefore, inclined to direct the release the petitioner on bail. Accordingly, the petitioner, named above, shall be released on bail upon furnishing a bail bond of Rs.50,000/- (Rupees Fifty Thousand) only with 1 (one) local surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M), subject, of course to the following conditions:

- i) That the petitioner shall co-operate with the investigation as and when required;
- ii) That the petitioner shall not hamper or tamper with the investigation in any manner;
- 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 office; and
- iv) That the petitioner shall not change his residence without obtaining prior written permission from the concerned investigating officer of the case.

In the event, the petitioner is found to have violated any of the above conditions or is found to be involved in other offences, the Investigating Officer shall be at liberty to apply for recall/cancellation of the bail granted to the petitioner.

The bail application is accordingly disposed of.

Return the case diary.

JUDGE

Comparing Assistant