

GAHC010082082023



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

Case No. : AB/1460/2023

MUN DEWRI @ MOON DEURI
S/O SRI JIBAN DEURI
R/O BAHGORA DEURI GAON
PO. BAHGORA, P.S. BIHPURI
DIST.LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M K NEOG

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

10.05.2023

Heard Mr M K Neog, learned counsel appearing for the petitioner and Mr R R Kaushik, learned Additional Public Prosecutor for the State of Assam.

2. The petitioner, Sri Mun Dewri @ Moon Deuri has filed this application under Section 438 CrPC, seeking pre-arrest bail in connection with Doomdoo PS Case No.

69 of 2023, under Section 366 IPC.

3. One Jatin Tanti lodged an FIR before the Officer-In-Charge, Doomdoooma Police Station, stating that his sister, Bandana Kumari Tanti, has been missing since 06.03.2023. He came to know that Bandana had love affair with one Moon Deuri of Lakhimpur. It is suspected that said Moon Deuri had kidnapped his sister. Then a case was registered vide Doomdoooma PS Case No. 69 of 2023, under Section 366 IPC. Subsequently, during investigation, a dead body was recovered and it was identified by the family members of the deceased to be the dead body of the victim Bandana.

4. It is submitted by the learned counsel for the petitioner that Bandana had committed suicide by jumping from Bhupen Hazarika bridge at Sadiya. Though the petitioner had love affairs with the deceased, but he is nowhere connected with the missing of the victim from her house nor the petitioner had kidnapped the deceased, prior to her death. The case was registered under Section 366 IPC and no ingredients of the offence are found against the accused petitioner, for which the benefit of pre-arrest bail may be given to the petitioner.

5. On the other hand learned Additional Public Prosecutor fairly conceded that the offence under Section 366 IPC is not made out against the present petitioner and as such, he has no objection if the privilege of pre-arrest bail is extended to the petitioner.

6. I have perused the Case Diary including the statements of witnesses recorded under Section 161 CrPC.

7. Admittedly, the accused had love affair with the deceased. It also appears from the statements of the witnesses that they used to quarrel with each other. It also reveals that the victim had jumped from Sadiya bridge and committed suicide.

8. Section 366 IPC reads as follows:-

“366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—
Whoever kidnaps or abducts any woman with intent that she may be compelled, or

knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term 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 IPC, one has to kidnap a girl/woman for the purpose of marriage or force the victim or seduce to illicit intercourse, but there is no complaint against the present petitioner that he had kidnapped the victim for the purpose of marriage or forced her or seduced her to illicit intercourse.

10. Post-Mortem Report is available in the Case Diary, from which it reveals that cause of death is not known as the manner of death is undetermined due to advanced decomposition of the body. However, the findings are consistent with submerged water.

11. Though the Investigating Officer has filed objection not to grant pre-arrest bail to the petitioner as the investigation of the case is not yet completed and some vital information regarding the absconding accused petitioner remains to be collected and there is every chance of manipulation and threatening of the witnesses. Though the Investigating officer alleged in his objection that the accused is very much involved in the case, including the death of the deceased, but the Investigating Officer has not taken any initiative with further prayer before the Court by adding any provision of law. So, the fact remains that the allegation made against the accused petitioner is that of kidnapping for the purpose of marriage or to seduce to illicit intercourse, which is lacking in this case.

12. 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 it is a fit case where the privilege of pre-arrest bail can be extended to the petitioner.

13. Accordingly, it is provided that in the event of his arrest in connection with Doomdooa PS Case No. 69/2023, the petitioner, namely, Sri Mun Dewri @ Moon Deuri, 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 7 (seven) 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.

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

15. Send back the Case Diary.

JUDGE

Comparing Assistant