

GAHC010082502023



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

Case No. : Bail Appln./1454/2023

HIRAKJYOTI SARMAH
S/O DILIP SARMAH
VILL- ARANGOMOU
P.S. AND DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P K GARODIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

12.05.2023

Heard Mr P K Garodia, learned counsel for the petitioner and Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

2. By this application filed under Section 439 CrPC, the petitioner, Hirakjyoti Sarmah has sought for bail in connection with Hajo PS Case No. 209/2023, registered under Sections 420/406/313/294/506 IPC

3. Learned counsel for the petitioner has submitted that the accused petitioner was

arrested on 02.04.2023 and since then, he is behind the bar. The allegations leveled as per FIR are false, fabricated and concocted. The victim is a major girl, aged about 35 years. So, she was a consenting party to have sexual intercourse with the petitioner. When she became pregnant, the petitioner refused to marry her. Hence, the FIR was lodged against him with a false story of termination of pregnancy by using force.

4. On the other hand learned Additional Public Prosecutor, Mr B B Gogoi, submits that both the persons are major and they did some act but regarding termination of pregnancy there is sufficient material found against the petitioner which falls under Section 313 IPC. So, at this stage, bail may not be granted to him.

5. Case Diary is received. Perused the same along with the medical report of the victim girl.

6. It is alleged by the victim that she was introduced with the petitioner through Facebook. Subsequently, the relationship had been developed. The petitioner proposed the victim and she accepted the love proposal of the petitioner. Then the petitioner also tempted that he would marry her. Thereafter, they started to meet each other and subsequently they had physical relation between them, as a result of which, she became pregnant. When the petitioner came to know about her pregnancy, he brought some medicine for her and forced her to take the medicine. When she told the petitioner that he promised to marry her so, why it is required to take the medicine for termination of pregnancy. Then the petitioner disclosed that he could not marry her due to death of his mother and would marry her after one year. On believing him, she took the medicine and she became sick and ultimately, her pregnancy was terminated. Subsequently, the petitioner also disclosed that he would not marry the victim but marry another girl.

7. One medical report (discharge certificate) of the victim is available in the record, which reveals that the victim was admitted to GMCH on 23.07.2022 and discharged on 28.07.2022. On examination, the victim was diagnosed with-

***“Para with ® sided ruptured ampullary Ectopic
0 +1***

Pregnancy with moderate anaemia.

7.1. Thereafter, she was treated as under:-

“Laparotomy with ®-sided salpingectomy GA on 23.07.2022 ORN 36567

IO finding: Adhesion seen between omentum and anterior abdominal wall.

Massive Haemoperitoneum seen 1.2 L

® sided ovary ®, ® sided tube ampullary ruptured seen. Active bleeding seen ① sided ovary and tube normal, specimen sent for HPE”

8. Section 313 IPC says that whoever commits the offence of causing a woman with child to miscarry without her consent, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

9. From the statement of the victim as well as the medical report, it reveals that due to physical relationship with the petitioner the victim became pregnant and the accused forced her to administer the medicine for termination of pregnancy and accordingly, the victim took the medicine and the pregnancy was terminated.

10. Having regard to the submissions made by the learned counsel for both the parties as well as the Case Diary and the medical report of the victim, the bail prayer made on behalf of the petitioner is rejected.

11. Bail Application stands disposed of.

12. Send back the Case Diary.

JUDGE

Comparing Assistant