

GAHC010085652023



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

Case No. : AB/1507/2023

JONAB ALI @ JANAB ALI AND ANR
S/O LATE JAHARUDDIN, VILL-DABORBIL, P.S.-RUNIKHATA, DIST-
CHIRANG (BTAD), ASSAM

2: HASEN ALI
S/O JOYNUDDIN
VILL-PUB-ANKORBARI
P.S.-DHALIGAON
DIST-CHIRANG (BTAD)
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

25.08.2023

Heard Mr. N. Uddin, learned counsel for the applicants and Mr. R.J. Barua, learned Addl. P.P. for the State respondent.

2. This application, under Section 438 of the Code of Criminal Procedure,

is preferred by applicant, namely, **Jonab Ali @ Janab Ali** and **Hasen Ali**, who have been apprehending arrest in connection with **Runikhata P.S. Case No. 04/2023**, under Sections 120[B]/ 354[B]/ 376/ 511/ 166[A] of the IPC, for grant of pre-arrest bail.

3. The said case has been registered on the basis of an FIR lodged by Smti. 'X' [name withheld] on 27.01.2023. The essence of allegations made in the FIR is that on 10.01.2023, at about 8 am, Musstt. Hasina Bibi and Jahirul Sheikh taken her to a remote and lonely place, for work as helper of a mason and there, 4 unknown persons joined with them and undressed her and took her photograph and also attempted to commit rape upon her.

4. Mr. Uddin, learned counsel for the applicants submits that the applicants are innocent and no way involved with the offence alleged in the FIR and that they are ready to cooperate with the investigating agency. Mr. Uddin further submits that there is also delay of 13 days in lodging the FIR and therefore, it is contended to allow this petition.

5. Mr. Barua, learned Additional Public Prosecutor submits that he has the instruction that the I.O. has already completed investigation and laid Charge-Sheet against the applicant, vide Charge-Sheet No. 20/2023, dated 31.05.2023. Mr. Barua further submits that the statement of the victim was recorded under Section 164 of the Cr.P.C., but the same is not available in the scanned copy of the case record, received from the learned court below. However, Mr. Barua submits that the statement of the victim recorded under Section 161 of the Cr.P.C. is available and in view of the statement under Section 161 of the Cr.P.C. it cannot be said that this is a case under Sections 376/511 of the IPC.

6. In view of above, this application stands disposed of by directing the applicant to appear before the learned court below on or before **18.09.2023**, and to apply for regular bail and in event of filing such an application, the learned Court

below shall consider the same in accordance with law.

7. Till then, in the event of arrest of the applicant, in connection with **Runikhata P.S. Case No. 04/2023**, under Sections 120[B]/ 354[B]/ 376/ 511/ 166[A] of the IPC, he shall be enlarged on interim pre-arrest bail on executing a bond of Rs. 50,000/- only with one surety of like amount to the satisfaction of the arresting authority.

8. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make himself available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant 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; and

(iii) that the applicant shall not leave the jurisdiction of the learned learned CJM, Chirang, without prior permission.

9. Accordingly, this AB stands disposed of.

JUDGE

Comparing Assistant