

GAHC010086512023



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

Case No. : AB/1470/2023

YEANUR HUSSAIN
S/O LATE BELAR UDDIN
VILL- KUTKUTAR BHITA
P.O. BOGORIBARI
DIST. KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

24.05.2023

Heard Mr. K. Bhuyan, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. PP for the State.

2. This anticipatory bail application has been filed by the petitioner namely, Yeanur Hussain, apprehending arrest in connection with Kokrajhar P.S. Case No. 120/2023 under Sections 420/342/376 of the IPC.

3. It is submitted that an FIR dated 22.03.2023 was lodged by the informant alleging that the informant came to be known to the accused person, namely the petitioner herein, through '*Facebook*' since past 6 to 7 months. Their acquaintance developed into an affair. On 19.03.2023 at about 09.17 in the morning in the response to an offer of his promise for marriage and to execute a marriage agreement at the Kokrajhar Court, the informant was called by the accused-petitioner and they met around 09.48 in the morning and came together to Kokrajhar by Bus. However, the petitioner did not bring her to the Court. He instead took her to a restaurant i.e. Ruchita Restaurant at about 1.30 PM. It was alleged that in a cabin of the said restaurant, the petitioner had confined the informant and had forcefully engaged in a physical relationship with the informant without her consent. The petitioner, thereafter, left the place

of occurrence. The informant came to her residence accompanied by one of her relative. Pursuant thereto the FIR was lodged. The FIR having been received and registered as the aforesaid Police Station Case, investigations have commenced in the matter.

4. This Court vide earlier orders passed had called for the case diary along with the statement of the victim recorded under Section 164 Cr.P.C as well as medical report.

5. The case diary as called for has been produced by the learned Addl. Public Prosecutor.

6. Upon due perusal of the case diary, it is seen from the statements made by the informant under Section 164 Cr.P.C that she had implicated the petitioner by making specific allegations. The medical report, however, did not reveal any injury. There is no opinion of the medical expert regarding signs of recent physical relationships in respect of the informant. The medical examination was conducted on 22.03.2023 at 2.00 PM and the incident took place on 19.03.2023.

7. The case diary further revealed that the statement of the Manager of the said Restaurant who stated that he had seen the petitioner and the informant entering their restaurant, however, he was not a witness to the alleged acts committed by the informant against the petitioner as he had to leave the

restaurant for some other work.

8. Perusal of the bail petition shows that the petitioner does not deny the allegation that he had been with the informant in the said restaurant on the date and time mentioned. There is only a denial that he did not enter into any physical relationship with the informant.

9. The ingredients necessary for punishment under Section 376 IPC is prescribed under Section 375 IPC. A perusal of the Section 375 IPC reveals that '*penetration*' or '*insertion*' is sufficient to constitute an offence of rape. The medical opinion reveals that there is no recent evidence of sexual activity and there is no opinion as regards '*penetration*' or '*insertion*'. A perusal of the statements made under 164 Cr.PC of the informant reveals that there is specific allegations against the petitioner which *prima facie* satisfies the ingredients necessary under Section 375. These allegations are grave in nature. The punishments prescribed under the statute, if convicted, are severe.

10. Upon due consideration of the materials available before this Court and also upon consideration of the submissions made by the learned counsels for the parties, this Court is of the considered opinion that in view of the gravity of the offences alleged and the incriminating materials available in the case diary against the petitioner, this Court does not consider this to be a fit case to grant

the privilege of anticipatory bail to the petitioner at this stage of investigation.

11. Therefore, the anticipatory bail application stands dismissed.

12. Return the case diary.

JUDGE

Comparing Assistant