

GAHC010093742023



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

Case No. : AB/1587/2023

ABDUS SAMAD MONDAL ALIAS ABDUS SAMAD ALI
S/O TAIMUDDIN MONDAL
VILL- PACHIM BAHDRAGAON, P.O. BIDYAPUR, P.S. BIDYAPUR
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR B PATHAK

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

21.07.2023

Heard Mr. B. Hazarika, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor, appearing for the State of Assam.

This is an application under section 438 of the Code of Criminal Procedure, 1973 filed by the petitioner, namely, Md. Abdus Samad Mondal alias Abdus

Samad Ali, who is apprehending arrest in connection with Bongaigaon P.S. Case No. 181/2023 under section 306 of the Indian Penal Code.

The accusation in this case is that on 24.04.2023, one Monowar Hussain lodged an FIR before the Officer-in-Charge of Bidyapur Police Outpost *inter-alia*, alleging that his niece who was aged about 16years was sexually assaulted in the name of love by the present petitioner. It was also stated in the FIR that on 04.08.2022 at around 10:00 A.M. the deceased and the petitioners were found in compromising position by the father of the deceased and accordingly the people of locality discussed the matter and it was agreed that the petitioner would marry the girl once she attained majority. It is also alleged in the FIR that in the guise of promise to marriage the petitioner was blackmailing and harassing the deceased mentally and physically and on 23.04.2023 at around 2:30 P.M. the niece of the first informant committed suicide by hanging herself in her home and it is alleged that the present petitioner is responsible for the suicide of the deceased. On receipt of the said FIR, Bongaigaon P.S. Case No. 181/2023 under section 306 was registered.

Learned counsel for the petitioner submits that the petitioner was having a love affair with the deceased and the father of the deceased opposed to the said relationship. He has denied having any sexual relationship with the deceased and has stated that he has been falsely implicated in this case by the uncle of the deceased without any basis.

It is also submitted by the learned counsel the petitioner that no suicide note has been left by the deceased implicating the present petitioner in any manner with her death.

On the other hand, learned Additional Public Prosecutor has placed the case diary of Bongaigaon P.S. Case No. 181/2023 which was called for in connection with this case and has submitted that the call detailed records of the telephonic conversations between the present petitioner and the deceased shows that there was telephonic conversations between the deceased and the present petitioner immediately even on the date when the deceased had committed suicide that to immediately before the commission of suicide by the deceased. Learned Additional Public Prosecutor also submits that the Investigating Officer has recorded the statements of witnesses who has implicated the present petitioner with the alleged offence.

I have considering the submissions made by learned counsel for both sides and have perused the case diary of Bongaigaon P.S. Case No. 181/2023.

The love relationship between the petitioner and the deceased has not been denied by the present petitioner. It is also denied that he was conversing with the deceased over telephone prior to death. However, it also appears from the case diary that there was a marriage agreement entered into between the father of the deceased and the present petitioner that he would marry the deceased once she attained the age of majority. However, apart from the call-detailed record which shows that there was conversations from the mobile phone of the deceased as well as mobile phone of the present petitioner on the date when the deceased committed suicide there is no credible evidence to show that the deceased was forcefully subjected to sexual inter-course by the present petitioner or that he in any manner abated the commission of suicide by the deceased.

Considering the materials available in the case diary, this Court is of the

considered opinion that if the present petitioner co-operates with the Investigating Officer of Bongaigaon P.S. Case No. 181/2023, his custodial detention may not be necessary for fair completion of the investigation of the said case.

In view of above, the present petitioner, namely, Abdus Samad Mondal alias Abdus Samad Ali is hereby directed to appear before the Investigating Officer of Bongaigaon P.S. Case No. 181/2023 within a period of 10 (ten) days from the date of this order. If he does so within the stipulated period of time, in the event of his arrest, in connection with Bongaigaon P.S. Case No. 181/2023, he shall be allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the condition that the petitioner shall co-operate with the Investigating Officer in the fair completion of the investigation of Bongaigaon P.S. Case No. 181/2023, (ii) 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 or her from disclosing such facts to the Investigating Officer and (iii) the petitioner shall make available himself for interrogation in connection with the said case as and when required by the Investigating Officer of the said case.

With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant