

GAHC010096662023



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

Case No. : AB/1622/2023

MD. ZAHUR ALI
S/O MD. SUKUR ALI
R/O VIL- BORKURANI
P.S. MAYONG
DIST. MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J C BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 05-10-2023

1. Heard Mr. J.C. Bora, learned counsel for the petitioner. Also heard Mr. K Baishya, learned Additional Public Prosecutor, Assam.
2. This application has been made under section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner ***Md.***

Zahur Ali who is apprehending that he may be detained in connection with PRC Case No.2654/2021 pending before the Court of learned SDJM (S), Morigaon (corresponding to Mayong PS Case No.10/2021) under sections 450/376 IPC.

3. The gist of accusations against the present petitioner, in brief, is that on 13.01.2021 the victim lodged an FIR before the Officer In-charge of the Mayong police station, inter alia, alleging that on 08.01.2021 at about 9.00 PM taking advantage of the absence of the husband of the victim, the present petitioner entered into her house and held her forcefully and outraged her modesty. On receipt of the said FIR Mayong PS Case No.10/2021 was registered under section 450/376 IPC and investigation was initiated. Ultimately after completion of the investigation, charge sheet was laid against the present petitioner under sections 450/376 IPC. The Court of the learned SDJM (S) Morigaon to which the case was transferred has taken cognizance of the offence against the present petitioner under sections 450/376 IPC and has issued summons against the present petitioner.

4. The learned counsel for the petitioner has submitted that the victim in this case had earlier also lodged similar FIR against the present petitioner and has later on withdrawn the same after reaching a settlement between the parties.

5. It is further submitted by the learned counsel for the petitioner that there are land disputes between the husband of the informant and the present petitioner due to which the informant used to file false cases against him.

6. It is further submitted by the learned counsel for the petitioner that though the Court of the learned SDJM (S) Morigaon has issued summons against the present petitioner, however, as the case has been charge sheeted against him under section 376 of the IPC, for which the maximum punishment is up to life imprisonment, the petitioner apprehend that on his appearance before the learned Committal Court i.e. the Court of learned SDJM (S), Morigaon, he may not be allowed to go on bail and therefore he has approached this court.

7. On the other hand, the learned Addl. PP has submitted that the offence involved in this case is heinous in nature and therefore, he has opposed the grant of bail to the present petitioner.

8. I have considered the rival submissions made by the learned counsel for both the sides and have perused the materials available on record including the scanned copy of the case record of PRC Case No.2654/2021.

9. It appears that on perusal of the scanned copy that the learned Committal Court has only issued summons to the petitioner and the next date is fixed on 16.10.2023, however, it also appears that as the charge sheet has been laid under sections 450/376 IPC, hence, the Committal Court may not grant bail to the present petitioner due to the embargo of section 437(1)(ii) of the Code of Criminal Procedure read with section 209(a) of the Code of Criminal Procedure, 1973.

10. In view of the above, the present petitioner is directed to appear before the learned Committal Court i.e., on 16.10.2023 and if

he does so on the said date, the learned Committal Court i.e., SDJM (S) will allow the petitioner to go on bail of Rs.30,000/- with one suitable surety of the like amount to the satisfaction subject to condition which the said Court may impose on appearance of the petitioner before the said Court.

11. With the above observations, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant