

GAHC010097952023



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

Case No. : AB/1680/2023

MONNAF ALI AND ANR
S/O KASHEM ALI
VILL- BORO BALU
P.S. SUKCHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM
PIN-783128
2: ABDUL ASHADUR JAMAN @MITHUN SK.
S/O DELBOR ALI
VILL- BORO BAGJHAPA
P.S. SUKCHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-78312
VERSUS
THE STATE OF ASSAM
TO BE REP. BY PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29-05-2023

Heard Mr. H R A Choudhury, learned Senior counsel assisted by Mr. A Z Ahmed, learned counsel for the petitioners. Also heard Mr. M P Goswami, learned Additional Public Prosecutor, Assam for the State.

2. By this application under Section 438 Cr.P.C., the petitioners, namely, (i) **Monnaf Ali**, S/O Deldar Ali and (ii) **Abdul Ashadur Jaman @ Mithun SK**, S/O Kashem Ali have prayed

for their pre arrest bail in Sukchar P.S. Case No. 52/2019 registered under Sections 447/419/325/365/376/34 IPC, corresponding to GR No. 513/2019.

3. On 08.06.2019, the victim as an informant lodged the written FIR before the Officer-in-Charge of Sukchar Police Station stating that on the night of 03.06.2019, the petitioners along with one Kashem Ali and Alom Sheikh around 10.30 PM forcefully took her away and kidnapped her from her house and took her to the house of the accused persons where she was physically assaulted and wounded. Later, she was kept in the house of one Alom Sheikh for three days and the petitioner No. 2 promising to marry her committed rape on her. On 06.06.2019 at around 11.30 PM, the accused persons of the case and some other unknown persons with arms in their hands pulled her out from the house of Alom Sheikh and the petitioner No. 2 without marrying her left her in the house of her parents. As such, the victim lodged the said FIR which was registered as Sukchar P.S. Case No. 52/2019, as noted above.

4. Perused the Case Diary placed before the Court by Mr. M P Goswami, learned Additional Public Prosecutor, Assam.

5. It is seen that one of the FIR named accused persons, namely, Alom Sheikh was already arrested in said Sukchar P.S. Case No. 52/2019 on 01.05.2023.

6. Perused the statement of the victim/informant recorded on 15.06.2019 under Section 164 Cr.P.C. by the learned Sub-Divisional Judicial Magistrate (M), Hatsingimari, wherein she claimed to be of 21 years old and stated that she had a love affair with the petitioner No. 2 and that the said petitioner committed rape on her in an unknown place where the FIR named accused persons took her and kept her in that place.

7. In her statement recorded under Section 164 Cr.P.C., the victim also stated that while the petitioner No. 2 was committing rape on her, the present petitioner No. 1 and Alom Sheikh were away from the said place. Later, three persons dropped her in the house of the petitioner No. 2 and the accused petitioner No. 2 along with others assaulted her and she was taken to the house of Alom Sheikh on the same night itself.

8. Though the petitioner No. 2 promised to marry her and kept her for three days, but he without marrying her, on the midnight of 06.06.2019 dropped her in her paternal home and she was left there.

9. Perused the Medical Report of the victim.
10. It is seen that the victim was examined at Dhubri Civil Hospital on 12.06.2019. The Radiological Age Determination Report of the victim dated 12.06.2019 reflects that the petitioner was between 18-19 years old.
11. Medical Report of the victim dated 27.08.2019 reflects that the victim stated before the Doctor that the petitioner No. 2 forcefully took her at 10.30 PM from her home on 03.06.2019 and since then she was kept in his house up to 06.06.2019 where she was physically assaulted by the petitioner No. 2 who promised to marry her. On 06.06.2019 at midnight the said accused petitioner No. 2 left her in front of her house.
12. The Medical Report of the victim reflects absence of any mark of violence/injury on her person. There was no injuries on her private parts too and the senior lady doctor of said Dhubri Civil Hospital who examined her indicated that as per the clinical findings as well as the medical investigation report, it cannot be said as to whether the victim was raped or not.
13. Considering the above, the Court is of the view that custodial detention of the petitioners, named above, is not warranted in said Sukchar P.S. Case No. 52/2019 corresponding to GR No. 513/2019, noted above.
14. Accordingly, in the event of arrest of the petitioners, namely, (i) **Monnaf Ali**, S/O Deldar Ali and (ii) **Abdul Ashadur Jaman @ Mithun SK**, S/O Kashem Ali in said Sukchar P.S. Case No. 52/2019 corresponding to GR No. 513/2019 registered under Sections 447/419/325/365/376/34 IPC, they shall be released on bail on furnishing bail bond of Rs. 50,000/- each, with two local sureties each of the like amount to the satisfaction of the arresting authority on conditions that the petitioners **(i)** shall appear before the Investigating Officer of Sukchar P.S. Case No. 52/2019 on or before **02.06.2023** during the office hours and thereafter, as and when they are required for necessary investigation of said Sukchar P.S. Case No. 52/2019; **(ii)** shall not leave the territorial jurisdiction of the Sukchar police station, without obtaining prior written permission from the concerned Investigating Officer of the case; **(iii)** shall not hamper with the investigation, or tamper with the evidence of the case and **(iv)** 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 them from disclosing such

facts to the Court or to any police officer.

15. Any violation of the aforesaid terms and conditions by any of the petitioners, named above, the pre arrest bail granted to them in the aforementioned Sukchar P.S. Case No. 52/2019 shall stand automatically vacated.

16. This pre arrest bail application stands allowed to the extent above.

17. Case Diary be returned.

JUDGE

Comparing Assistant