

GAHC010104392023



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

Case No. : Bail Appln./1741/2023

FAKAR UDDIN
S/O LATE JANAB ALI
VILL- DURABHANDHI BEEL,
WARD NO. 10,
P.S. MOIRABARI
DIST. MORIGAON, ASSAM ,
PIN-782126

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

14.06.2023

Heard Mr HRA Choudhury, learned Senior Counsel appearing on behalf of the petitioner. Also heard Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. The petitioner, Fakar Uddin, who was arrested on 25.04.2023, has preferred this application under Section 439 CrPC, seeking bail in connection with Moirabari PS Case No. 84/2023, under Section 376 IPC, read with Section 4 of the POCSO Act, 2012.

3. Learned Senior Counsel for the petitioner has submitted that the petitioner is the owner of a restaurant located at Moirabari Bazar in Morigaon District and the petitioner is no way connected with the offence as alleged. It is further submitted that on the alleged day of occurrence, i.e., on 22.04.2023, one Harun Rashid (accused named in the FIR) came along with the victim in the restaurant of the petitioner, but, at the relevant time, the accused petitioner was not present there and as such, he has no knowledge regarding the alleged offence.

4. It is further submitted by the learned Senior Counsel that although the accused petitioner is not named in the FIR, but as he is the owner of the restaurant, he was arrested by the Police on 25.04.2023 and has been languishing in jail hazot for the last 49 days. Accordingly, the learned counsel prayed that the petitioner may be released on bail.

4. On the other hand, learned Additional Public Prosecutor submits that the Case Diary is received, but without the FSL Report and as such, he has raised objection on the prayer made on behalf of the petitioner.

5. I have considered the submissions made by the learned counsel for both the parties. I have also perused the Case Diary, along with the statement of the victim recorded under Section 164 CrPC.

6. In the statement recorded under Section 164 CrPC, she has clearly implicated the FIR-named accused Harun Rashid for forcefully committing rape upon her, but however, it appears that she has made no allegation against the petitioner.

6. In view of the above and considering the statement of the victim as well as the period of detention, this bail application is allowed. Accordingly, it is hereby directed

that the petitioner, namely, Fakar Uddin, shall be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty-Five Thousand) Only with one surety of the like amount, to the satisfaction of the learned CJM, Morigaon in connection with the aforesaid case. The bail granted to the petitioner shall be subject to following conditions:-

- (a) The petitioner shall not leave the territorial jurisdiction of learned CJM, Morigaon, without prior written permission from him;
- (b) The petitioner shall not hamper and tamper with the evidence of the case;
- (c) 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 them from disclosing such facts to the Court or to any police officer.

7. With the aforesaid directions, this Bail Application stands disposed of.

8. Send back the Case Diary.

JUDGE

Comparing Assistant