

GAHC010104942023



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

Case No. : AB/1907/2023

SADDAM HUSSIAN
S/O- RIYUJ UDDIN, R/O- DANDUA BELORTUP, P.O. MORIGOAN, P.S.
MORIGOAN, DIST.- MORIGOAN, ASSAM, PIN- 9577726468

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM

Advocate for the Petitioner : MR D MEDHI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

26.06.2023

Heard Mr. K. Thakur, learned counsel for the applicant. Also heard Mr. R.J. Baruah, learned Addl. Public Prosecutor, Assam for the State.

2. This application under Section 438 of the Cr.P.C. is preferred by the applicant, namely, Saddam Hussain, apprehending arrest in connection with Morigaon P.S. Case No. 257/2022 under Sections

341/354/354(A)/354(B)/365/511 of the IPC, read with Section 10 of the POCSO Act.

3. The said case has been registered on the basis of an FIR lodged by Halima Begum on 15.07.2022. The essence of allegation made against the applicant is that on 11.07.2022 at about 6.30 P.M., the applicant and one Ismail Ali subjected her daughter Smti. 'X' (name withheld) to sexual assault.

4. Mr. K. Thakur, learned counsel for the applicant submits that this is the second anticipatory bail application and the first one, being A.B. No. 3388/2022, was dismissed by this Court after perusing the case diary vide order dated 15.12.2022. Mr. Thakur further submits that by the same order, this Court was pleased to extend the privilege of pre-arrest bail to another applicant namely, Ismail Ali and he appeared before the I.O. and his statement is recorded and therefore, the second anticipatory bail application is preferred and that in the meantime, the I.O. got sufficient time for investigation in the case and on such count custodial interrogation of the applicant appears to be not necessary and therefore, it is contended to allow this petition.

5. On the other hand, Mr. R.J. Baruah, learned Addl. Public Prosecutor, Assam submits that he has received the case diary and that the victim in her statement under Section 164 Cr.P.C. has implicated the accused in the offence alleged in the FIR, and now the case is pending for arrest of the applicant.

6. Having heard the submissions of learned Advocates of both sides, I have carefully perused the petition as well as the documents placed on the record and also perused the case diary produced before this Court by the learned Addl. Public Prosecutor. It appears that in A.B. No. 3388/2022, this Court was pleased to extend the privilege of pre-arrest bail to one of the applicant namely, Ismail

Ali and also pleased to dismiss the petition filed by the present applicant. Further, it appears that since rejection of the said anticipatory bail application on 15.12.2022, more than six months elapsed and the I.O. got sufficient time for investigation.

7. It also appears that material part of the investigation appears to be over and there remains to collect the medical report of the victim girl.

8. In view of the above, custodial interrogation of the applicant seems to be not warranted in the interest of investigation and therefore, this Court is inclined to allow this petition.

9. Accordingly, it is provided that in the event of arrest of the applicant, in connection with Morigaon P.S. Case No. 257/2022 under Sections 341/354/354(A)/354(B)/365/511 of the IPC, read with Section 10 of the POCSO Act, he shall be released on pre-arrest bail on executing a bond of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with on surety of like amount to the satisfaction of the arresting authority. However, the above privilege is subject to the following conditions:

- (i) That the applicant shall not leave the jurisdiction of the learned CJM, Morigaon without prior permission;
- (ii) That the applicant shall make himself available before the Investigating Officer as and when directed; and
- (iii) That the applicant 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 from disclosing such facts to the Court or to any police officer.

10. In terms of the above, the anticipatory bail application stands disposed of.

11. The case diary be returned.

JUDGE

Comparing Assistant