

GAHC010108712023



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

Case No. : AB/1795/2023

MD. ASADUL HOQUE @ ASHADUL HOQUE
S/O MD. AKBAR ALI, R/O VILL-KURANIBARI, WARD NO. 2, P.S.-MAYONG,
DIST-MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. D GHOSH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

23.05.2023

Heard Ms. N. Deka, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Md. Asadul Hoque @ Ashadul Hoque has approached this Court seeking the

benefit of pre-arrest bail, apprehending his arrest, in connection with Mayong Police Station Case no. 166/2021, registered under Sections 420/376/325/34, Indian Penal Code [IPC] for the second occasion after rejection of his previous bail application, A.B. no. 3150/2021 by an order dated 28.10.2021 after perusal of the materials in the case diary produced on that date.

3. The previous bail application was preferred by the petitioner along with two other accused persons named in the FIR. By order dated 28.10.2021, the other two petitioners were extended the privilege of pre-arrest bail and the prayer for pre-arrest bail in respect of the present petitioner was rejected finding incriminating materials in the case diary against him.

4. The instant application has been preferred by the petitioner on the premise that the petitioner and the victim was in a love relationship and they were contemplating to enter into the marital relationship. As they were young and the petitioner did not have any source of income, his family members asked both of them to wait for 3-4 years. It is further alluded that the parents of the victim due to personal grudge with the family member of the petitioner relating to a land dispute, instituted the FIR and the allegations leveled therein are false, fabricated and concocted ones.

3. In the First Information Report [FIR] lodged on 26.08.2021, the informant has, inter alia, alleged that the petitioner had developed a physical relationship with her since last about 1 [one] year on the pretext of marrying her. It has been alleged that she was also administered tablets by the petitioner for committing sexual act. Allegation against the mother and the father of the petitioner was to the effect that the informant was assaulted by them on 21.08.2021 resulting in injuries on the person of the informant.

4. When the previous pre-arrest bail application came up for consideration on 28.10.2021, the learned Additional Public Prosecutor produced the case diary containing the materials collected during the course of investigation carried out till then. Upon perusal of the said materials in the case diary, it was found that the date of birth of the informant is

10.05.2003. The informant had alleged that the petitioner had developed physical relationship since about last one year, meaning thereby, he established the physical relationship with her when she was minor, giving her a false promise of marriage. From the statements of the victim recorded under Section 164, CrPC, it was noticed that the petitioner had established the physical relationship with the victim and used to make her consume tablets without any intention to marry her. In view of such materials, this Court was not inclined to extend the benefit of pre-arrest bail to the present petitioner.

5. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete. The grounds urged in this second application on behalf of the petitioner, filed after more than 1 ½ years from the date of the previous pre-arrest bail application, are not found to be of any substantial change in the fact situation obtaining in the case and as such, this Court does not find any good and sufficient reason for re-consideration of the earlier order dated 28.10.2021 passed in A.B. no. 3150/2021. Accordingly, the instant pre-arrest bail application, preferred for the second occasion, is found bereft of any merit and accordingly, the same is dismissed.

JUDGE

Comparing Assistant