

GAHC010119362023



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

Case No. : AB/1949/2023

GIRISH CHANDRA DEKA
S/O- LATE MUKTA RAM DEKA, R/O- KARARA, P.O. KARARA, P.S. BAIHATA
CHARIALI, DIST.- KAMRUP, ASSAM, MOB. 9864027090 EMAIL-
AKAHMED27@GMAIL.COM, PIN- 781381

VERSUS

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

Advocate for the Petitioner : MR A K AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 07-08-2023

1. Heard Mr. A Chaudhary, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam.
2. By this application under section 438 Cr.P.C., the petitioner, namely, **Girish Chandra Deka** has prayed for granting pre arrest bail apprehending arrest in connection with **Changsari PS Case**

No.147/2023 under sections **294/354/354(D)/506 IPC**.

3. Mr. A Chaudhary, learned counsel for the petitioner submits that though a case is registered under sections 294/354/354(D)/506 IPC, except section 354 IPC, all offences are bailable. He further contends that a bare perusal of the FIR does not disclose any offence under section 354 IPC. At best, according to the learned counsel, it can be a case under section 354 D IPC, which is a bailable offence or a case under section 354 A IPC, and the same is also a bailable offence. Therefore, this is a fit case where the petitioner shall be granted the privilege of anticipatory bail.

4. Mr. Chaudhary further contends that the petitioner has in the meantime cooperated with the investigating officer and got his statement recorded and therefore, no custodial interrogation is required. It is also contended by Mr. Chaudhary that the investigating authority has violated the direction issued by the hon'ble Apex Court in the case of **Arnesh Kr. State of Bihar** reported in **AIR 2014 SC 2756** and the recent judgment of the hon'ble apex court in **Md. Asfak Alam Vs. State of Jharkhand & Anr** (CrI.A No.2207/2023) by not issuing any notice under section 41Cr.P.C.

5. Per contra, Mr. P Borthakur learned Addl. PP submits that the investigation is at a very early stage and enlarging the accused on bail would have a negative impact on the investigation process as well as to the society. Further according to learned Addl. PP the investigating officer has specifically expressed that the accused may commit similar offence, if he is released on bail and may hamper and tamper the

witnesses if released on bail, he being the Headmaster of the school, wherein the victim was a teacher. He further contends that the victim has specifically implicated the petitioner in her statement recorded before the Magistrate under section 164 Cr.P.C as well as in the statement recorded before the police under section 161 Cr.P.C.

6. The case diary produced today is perused.

7. Now coming to the arguments advanced by Mr. Chaudhary, learned counsel for the petitioner that no case under section 354 IPC is made out, let this Court consider the section 350 IPC which deals with criminal force and section 351 IPC which deals with assault. In terms of section 354 IPC assault or use of criminal force to a women is a *sine quo non* as well as the intention to outrage the modesty or knowing that such act will bear outrage the modesty of a women is required to be present. In terms of section 351 IPC an assault will include any gesture or any action with the knowledge that it will make the other person apprehend the meaning of the gesture is to harm, injure or create fear of commission of an assault.

8. In the case is hand, the gestures and action as described in the FIR as well as in the statement of the victim recorded under section 164Cr.P.C and under section 161Cr.P.C have left no room of doubt that the action on the part of the accused is an assault in terms of section 354 IPC inasmuch as the allegation that the accused not only touched the cloths of the victim but also his intention is quite clear from the gesture as described in the FIR to treat it to be an assault within the meaning of section 354 IPC.

9. Coming to the question of issuing a notice, in the considered opinion of this court such argument is premature in nature inasmuch as the petitioner has not been arrested till date and therefore, at this stage the question of issuing notice has not arisen inasmuch as it cannot be presumed that the investigating authority shall not follow the mandate of **Arnesh Kumar** (supra) and **Asfak Alam** (supra) if they intend to arrest the petitioner.

10. Considering the materials available on record as well as the stage of investigation and the nature of allegation, this court is of the considered opinion that this is not a fit case to grant the privilege of pre arrest bail to the accused petitioner.

11. In view of the aforesaid the instant bail application stands rejected.

12. The interim order, if any, passed earlier stands vacated.

13. While parting with the records, it is made clear that the observations made in the present order is only for the purpose of determining the present application and should not be treated as determination or the merit of the allegation.

JUDGE

Comparing Assistant