

GAHC010141512022



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

Case No. : I.A.(CrI.)/401/2022

MINTU SARMAH
S/O UMESH SARMAH RESIDENT OF HAZARAPARA
PO AND PS TEZPUR
DIST SONITPUR
ASSAM 784001

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:U. SHARMA
C/O SRI TARINI SHARMA PERMANENT RESIDENT OF VILLAGE JALAH
PO AND PS TANGLA
DIST UDALGURI
BTAD
ASSAM 784521

Advocate for : MR. A PAUL
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

23.11.2023

Heard Mr. BK Mahajan, learned counsel for the petitioner. Also heard Mr.

Goswami, learned Additional PP and Mrs. S Goswami, learned counsel for the informant.

2. The present IA is filed under Section 389 of the Cr.P.C. for suspension of sentence and to allow the appellant / applicant to go on bail pending disposal of the connected appeal arising out of judgment and order dated 07.06.2022 passed by the learned Additional Sessions Judge (FTC), Sonitpur, Tezpur in Sessions Case No. 89/2019. By the aforesaid conviction of sentence, the appellant was sentenced to undergo rigorous imprisonment of 7 years and to pay fine of Rs. 5000/- and in default simple imprisonment for 6 months for committing offence under Section 376 IPC and to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 5,000/- in default to undergo simple imprisonment for further 6 months for commission of offence under Section 493 IPC.
3. The connected appeal was admitted and the LCRs were also called for.
4. Mr. Mahajan, learned counsel for the appellant submits that the statement of the informant / victim recorded under Section 161 Cr.P.C. , 164 Cr.P.C. and her testimony before the learned trial court below clearly shows that the informant not at all trustworthy inasmuch as she has changed her version of the incident in all the statements recorded. Therefore, there is a clear chance of acquittal in this case and accordingly, till the appeal is heard, the appellant be allowed to go on bail.
5. Per contra, Mr. Goswami, learned Addl. PP submits that though there may be some discrepancies in her testimonies, however, this is a case where it is established beyond reasonable doubt the appellant has cheated the victim and on the pretext to marry, raped her and therefore, the conviction has rightly been granted by the learned court under Section 376 IPC. Such contention has also been supported by the learned counsel appearing on behalf of the informant.

6. I have perused the material available on record more particularly, the statement of the victim recorded under Section 164 Cr.P.C. and her testimony. Also perused the FIR.
7. From the FIR, it is seen that it is the case of the victim that the accused cheated her to fall in love with a false promise to marry and thereafter raped her. Thereafter, she got pregnant twice and such pregnancy was aborted. Subsequently, for some days they started a conjugal life and thereafter, her mother-in-law kept issuing threat to her and asked her to leave their house and tortured her daily. From the aforesaid, it is prima-facie seen that even, if there is an allegation of cheating, however, she started the conjugal life with the appellant and it is her mother-in-law, who tortured her and thereafter she filed the FIR.
8. Coming to her deposition, it is seen she now narrated a story wherein specific two dates have been mentioned on which according to the informant, the appellant had forcefully raped her. However, she was confronted with such statement during cross-examination to contradict her statement recorded under Section 164 Cr.P.C. as well as 161 Cr.P.C.
9. The I/O was examined as PW9 and said I/O has also deposed before the learned trial court below that the victim had not made any statement regarding occurrence of the incident of rape on the aforesaid dates.
10. Considering the matter in entirety, this court is of the considered opinion, subject to the final determination in the appeal, that the appellant has been able to make out a case for bail during pendency of the connected appeal. Accordingly, same stands allowed.
11. Accordingly, it is directed that the appellant be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned

Additional Session Judge (FTC), Sonitpur, Tezpur.

12. Application stands disposed of.

JUDGE

Comparing Assistant