

GAHC010151432023



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

Case No. : AB/2436/2023

KHANDAKAR AHADUL ISLAM @ AHADULLA KHANDAKAR@ AHADUL
ISLAM
S/O. LT. KHANDAKAR MOKSHED ALI, VILL. KUMULLI PARA, P.S. HOWLY,
DIST. BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

08.09.2023

Heard learned counsel for the parties.

2. This is an application filed under Section 438 Cr.P.C. praying for anticipatory bail to the petitioner. The petitioner is charge-sheeted accused in connection with Barpeta PS case No. 37/2015 under Section 120(B)/366

IPC corresponding to PRC case No. 741/2022, which is pending for trial before the learned Sessions Judge, Barpeta.

3. This court has called for the scanned copies of the case diary as well as record of the case.

4. From the perusal of the 164 statement of the victim, it is seen that the victim has alleged that she had love affair with one Raju Ali and one day Raju Ali took her to Bongaigaon and from Bongaigaon she was taken to Haryana forcefully by said Raju, one Abdul Haque, one Ahadul Khandakar and one Rafikul Islam and she was sold at Haryana to one Birendor at Rs. 1,50,000/-. Said Ahadul Khandakar is the present petitioner.

5. According to the said statement one day she took a chance and intimated her father through the daughter of Birendor over phone and she was rescued.

6. The case of the petitioner is that he is not any way involved in the present case and he was also not aware of such alleged offence inasmuch as police never visited his house. Therefore, he was not aware of such proceeding. He came to know about such proceeding only when he received summon from the learned Additional Chief Judicial Magistrate, Barpeta arraying him as an accused.

7. As the allegation made in the FIR and charge-sheet are sessions triable, the petitioner apprehending arrest preferred an application under Section 438 Cr.P.C. before the learned Sessions Judge, Barpeta. However, such application was rejected by the learned Sessions Judge, Barpeta by its order dated 03.07.2023 only on the ground that the victim in her statement recorded under Section 164 Cr.P.C. named the petitioner along

with other accused to be involved in the alleged offence.

8. The petitioner by way of filing of additional affidavit brought on record one deposition of the victim made in another case being MR case No. 270/2014 filed by the victim against her husband Abdul Hai. According to the said deposition before the court, the victim deposed that she got married with one Abdul Hai and said Abdul Hai started torturing her and as she could not fulfil the demand of dowry she was driven out from matrimonial home by her husband and threatened her not to return back without paying money.

9. She further deposed that she lodged a case against her husband under section 406 IPC and same is pending before the learned JMFC, Barpeta. She further claims that her husband is a rich man and has sufficient landed property and has wholesale grossery shop and earns Rs. 20,000/- to Rs. 30,000/- per month and accordingly she prayed for maintenance of Rs. 7,000/- per month.

10. In her cross-examination, she deposed that she has never visited Haryana with any Raju Ali and further deposed that she is not aware of her husband lodging any case against her that she eloped with someone else. She further deposed that after returning from Haryana she lodged the case against the second party. She denied the suggestion that she is not maintaining relation with one Raju Ali and therefore she is not interested to continue with the conjugal life with her husband.

11. From the aforesaid, the learned counsel for the petitioner argues that the statement of the victim is not trust worthy inasmuch as she on her own deposed that she never visited Haryana with any Raju Ali whereas in the 164 statement on the basis of which the application for

anticipatory bail of the petitioner was rejected reflects that the victim has alleged that she had love affairs with Raju Ali and one day Raju Ali took her to Bongaigaon and from Bongaigaon she was taken to Haryana forcefully by Raju, Abdul Haque, Ahadul Khandakar and Rafikul Islam.

12. Considered the submission advanced by the learned counsel for the petitioner. Also perused the scanned copies including the statement of the victim recorded under Section 164 Cr.P.C. as well as deposition made in the MR case No. 270/2014.

13. The fact remains that the summon is only issued against the petitioner and no warrant has been issued, however, the anticipatory bail application of the petitioner has been rejected by the learned Sessions Judge, Barpeta.

14. Considering the matter in its entirety and also considering the contradictory statement of the victim regarding her visit to Haryana and her statement regarding her love affair with one Raju Ali and denial of such relation in the other case, this court is of the view that the petitioner has been able to make out a case for pre-arrest bail. This court is also of the considered opinion that at this stage arresting the petitioner and putting behind him bar will not serve any purpose inasmuch as the statement of the victim has already been recorded under Section 164 Cr.P.C. and the investigation has already been completed

15. Considering all above, the petitioner, namely, Khandakar Ahadul Islam @ Ahadulla Khandakar @ Ahadul Islam is granted anticipatory bail and accordingly, in the event of arrest he shall be released on bail on furnishing a bond of Rs.30,000/- and one local surety of the like amount to the satisfaction of the arresting authority subject to condition that:

- I. He will appear before the learned committal court within a period of two weeks from today and on his appearance he shall be release on bail as provided herein above.
 - II. He shall appear before the trial court on each and every date fixed.
 - III. He shall not try to contact victim by any mode.
16. It is made clear that violation of any of the above conditions may lead to cancellation of the pre-arrest bail.
17. Application stands disposed of.

JUDGE

Comparing Assistant