

GAHC010144162023



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

Case No. : Bail Appln./2305/2023

NASIRUDDIN GIRJAHAN
S/O ABDUL KALAM
VILL- 1 NO. AHMEDPUR
P.S. BIHPURIA
DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

Linked Case : Bail Appln./2467/2023

MD. EMRAN MAMUD
S/O MD. SUKUR MAMUD
R/O VILL- BANGALMARA MIRI GAON
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. B CHOWDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 27-07-2023

Heard Mr. B Choudhury, learned counsel for the petitioner.

Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.

By this application under section 439 Cr.P.C., the petitioner namely, Md. Emran Mamud, is praying for bail in connection with Bihpuria P.S. Case No. 90/2023 (corresponding to G.R. Case No. 479/2023), under section 376/34 of IPC as the petitioner is behind bar since 18.05.2023 (70 days).

The accusation in this case against the present petitioner is that on 18.05.2023, the victim/informant has lodged an FIR before the Officer-in-Charge of Bihpuria Police Station, inter-alia, alleging that on 17.05.2023 night, while the informant was returning home at Bihpuria Block around 9.30 pm, the present petitioner offered her to drop her at home and as it was late at night, the informant took the lift from the present petitioner. However, it is alleged that the present petitioner took the informant to an unknown place and committed rape on her and later on he called his friend over telephone i.e Md Abdul Kalam who also tried to commit rape on her and thereafter, the informant raise hue and cry.

Then the local people came and apprehended the present petitioner and the co-accused and handed over them to police.

On receipt of the said FIR Bihpuria P.S. Case No. 90/2023 (corresponding to G.R. Case No. 479/2023), under section 376/34 of IPC was registered.

The learned counsel for the petitioner have submitted that he has been falsely implicated by the informant in the FIR. The learned counsel for the petitioner submits that the informant has also been earlier implicated in another case under POCSO Act namely, Special POCSO Case no. 10/2016 as an accused. Hence, his credential is not good and so she has falsely implicated the present petitioner.

On the other hand, the learned Additional Public Prosecutor for the State has placed the case diary which was called for and submits that there are incriminating materials against the present petitioner and the statement of the victim is recorded under section 164 of the Cr.P.C where the victim has implicated the present petitioner and other co-accused. However, he also submits that the investigation is fairly progressed and Investigating Officer has recorded the statements of the other witnesses and the investigation is pending only for the collection of Medical report and FSL report of the victim.

I have considered the submissions made by the learned counsel for both sides and also the materials available on record including the case diary. Though there are incriminating materials against present petitioner in the case diary, however, considering the progress of investigation as well as the period of detention as already undergone by the present petitioner, this Court is of the considered opinion that further custodial detention of the present petitioner is not necessary at this stage for fair completion of investigation.

In view of above discussions, the petitioner namely, Md. Emran Mamud is

enlarged on bail on furnishing a bail bond of Rs.30,000/- (Rupees Thirty Thousand) with one suitable surety of like amount, to the satisfaction of the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in connection with Bihpuria P.S. Case No. 90/2023 (corresponding to G.R. Case No. 479/2023), under section 376/34 of IPC on the following conditions:

- (i) That the petitioner shall not directly or indirectly make any threat or promise or induce any persons so as to dissuade him or her from disclosing any facts before the learned trial Court failing which bail order will be cancelled;
- (ii) that the petitioner shall co-operate with the investigation as and when called for.

With the observations made above, the bail application stands disposed of.

JUDGE

Comparing Assistant