

GAHC010158452023



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

Case No. : AB/2536/2023

AMINUL HOQUE
S/O LT. NASKAR ALI
R/O VILL- JOGIRMAHAL
P.O. BARKANDA
P.S. BILASIPARA
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 27-07-2023

Heard Mr. M.I. Hussain, learned counsel for the petitioner and Mr. K.K. Parashar, 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. Aminul Hoque has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Bilasipara Police Station Case no. 314/2022, registered for the offence under Section 376D, Indian Penal Code [IPC] for the second occasion after rejection of his earlier pre-arrest bail application, A.B. no. 3513/2022 by an

order dated 15.12.2022 after perusal of the materials available in the case diary, produced on that date by the learned Additional Public Prosecutor.

3. The First Information Report [FIR] was lodged by the informant on 27.09.2022 before the In-Charge, Nayahat Police Out Post, District – Dhubri stating *inter alia* that at around 10-30 p.m. on 25.09.2022, the two accused persons viz. [1] Majibar Rahman & [2] Aminul Hoque entered into the house of the informant-victim illegally and forcefully and committed rape upon her in a forceful manner after gagging her mouth.

4. In the present application, it is averred that the co-accused person viz. Majibar Rahman has, in the meantime, surrendered before the police and after such surrender, he was produced before the Court of learned Sub-Divisional Judicial Magistrate [M], Bilasipara on 18.03.2023. The learned counsel for the petitioner has contended that the co-accused person, in his statement, has not implicated the petitioner. He has drawn attention to the grounds of arrest, more particularly, ground no. [3] in the Forwarding Report dated 18.03.2023. In ground no. [3] of the Forwarding Report, it is mentioned that during interrogation of the victim, the victim has implicated that the arrested co-accused person viz. Majibar Rahman had committed forceful rape upon her.

5. When the previous pre-arrest bail application was considered on 15.12.2022, this Court perused the materials available in the case diary, produced on that date, including the statements of the informant recorded under Section 161, CrPC and 164, CrPC. In those statements, the informant-victim had specifically implicated both the accused persons, named in the FIR, for committing forceful assault upon her by entering into her house together. In the case diary, eye-witnesses accounts were also available and those statements corroborated the version of the informant-victim that the two accused persons were seen running out from the house of the informant-victim in the night hours of 25.09.2022. Having found such incriminating materials, the prayer for pre-arrest bail made by the petitioner in the previous pre-arrest bail application was rejected.

6. 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.

7. Having regard to the grounds urged in this pre-arrest bail application, preferred for the second time, this Court is of the considered view that the same cannot be treated to be grounds which deserve re-consideration of the earlier order dated 15.12.2022 passed in A.B. no. 1513/2022. Accordingly, the prayer for pre-arrest bail made by the petitioner is declined.

JUDGE

Comparing Assistant