

GAHC010169822023



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

Case No. : Bail Appln./2714/2023

MANSUR ALAM
S/O MD. MAKIM ALI R/O PANDU CABIN JALUKBARI PS. JALUKBARI
GUWAHATI DIST. KAMRUP METRO ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J DUTTA
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

21.08.2023

Heard Mr. N. J. Dutta, learned counsel appearing for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent and the informant/ alleged victim in person.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Mansur Alam**, has prayed for grant of bail in connection with **All Women PS Case No. 31/2023 under Sections 376(2)(f)/420/386/325/450 / 354D/506/509/120B of IPC read with Section 67 of the Information**

Technology Act, 2000.

The case diary, as called for, is placed before the Court.

Mr. N. J. Dutta, learned counsel appearing for the accused petitioner, submits that the accused has been languishing in judicial custody for 84 days. Mr. Dutta submits that he was arrested on 30.05.2023 without following the due process of law and that he has undergone interrogation in police custody for three days. It has been submitted that the accused is a student of B.Com, 4th Semester and he has no criminal antecedence. According to Mr. Dutta, learned counsel, the accused and the informant alleged victim are residents of the same locality and due to their good relationship, he was engaged as the informant's office Attendant-cum-Assistant of the All Assam Transgender Association and in that capacity, he rendered sincere service despite he was a minor at that time. Therefore, Mr. Dutta submits that further continuation of his detention in judicial custody for the purpose of the ongoing investigation is perhaps not warranted.

Mr. B. Sarmah, learned Additional Public Prosecutor, submits that the alleged victim informant in her statements recorded under Sections 161 and 164 Cr.P.C. has implicated the accused petitioner with the alleged offences. Mr. Sarmah further submits that the case diary *prima facie* indicates physical intimacy between the accused and the victim, but the medical report does not support the same. Mr. Sarmah, however, submits that the investigation is yet to be completed.

The informant/victim submits that she has filed an objection affidavit in the connected pre-arrest bail application being AB No. 2008/2023 filed by others.

The genesis of the prosecution case, as unfolded in the FIR, is that an FIR was lodged on 23.05.2023 at 6:30 PM by the informant at All Women Police Station alleging, *inter-alia*, that the accused Mansur Alam joined informant's chamber as Typist in the month of June 2021. After passing few days, he started flirting with the informant and also started trying to brainwash her to accept Islamism. The accused Mansur used to offer her some water and after drinking the same, she used to fall unconscious on her lower parts of the body and barely can move her hands, and during that moment, Mansur Alam used to have physical relation with her several times. It is also alleged that the accused and his other family members deceitfully taken lots of valuable goods including money from the informant. It is further alleged that the accused Mansur Alam frequently visited her house and induced to complete her pending Sex Reassignment Surgery and, accordingly, the informant underwent a surgery, but Mansur Alam denied to marry her and threatened her not to disclose anything to anyone.

It is noticed that the accused petitioner has been in judicial custody since 30.05.2023, that is for 83 days.

The medical report of the Board of Doctors of Guwahati Medical College Hospital, dated 29.05.2023, reveals, *inter alia*, evidence of Sex Reassignment Surgery from male to female on her private parts by sex changing operation and no evidence of injury on her body and private parts was detected.

A perusal of the statements of the alleged victim recorded under Sections 161 and 164 Cr.P.C., it is revealed that the present accused petitioner is implicated as the prime accused in the case.

The investigation has substantially progressed and as such, this Court is of

the opinion that further continuation of detention of the accused petitioner, who is a permanent resident under Jalukbari P.S., Guwahati for the purpose of the ongoing investigation is not warranted.

For the above stated reasons, more particularly the length of detention, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 40,000/-** with one surety of like amount to the satisfaction of the **learned Chief Judicial Magistrate, Kamrup(M)** subject to the following conditions-

- (i) That the accused petitioner shall cooperate with the Investigating Officer as and when required; and
- (ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or the Court.

Breach of any of the above conditions shall render cancellation of bail in accordance with law.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant