

GAHC010170432023



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

Case No. : AB/2716/2023

SHAMIM AHMED @ SAMIM HUJUR
S/O NURUL HOQUE
R/O VIL- BHERBERI JAMUNAMUKH P.O. JAMUNAMUKH
P.S. HOJAI
DIST. NAGAON, ASSAM
PIN-782428

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

23.08.2023

Heard Mr. G. Uddin, learned counsel for the applicant; Mr. K.K. Das, learned Additional Public Prosecutor for the State respondent; and Mr. R. Hoque, learned counsel for the informant.

2. Apprehending arrest in connection with the **Sipajhar P.S. Case No. 271/2023**, under Section 376[1] of the IPC, this application under Section 438

of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, **Shamim Ahmed @ Shamim Hujur** for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R., lodged by informant Smt. 'X' [name withheld] on 16.07.2023, to the effect that on 06.07.2023, at about 10 A.M., the applicant came to the house of the informant and there he committed rape upon the informant.

4. Mr. Uddin, learned counsel for the applicant submits that the applicant is innocent and he is no away involved with the offence alleged in the FIR and that he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Das, learned Additional Public Prosecutor has produced the Case Diary before this Court and vehemently opposed the petition. By referring to the statement of the victim recorded under Section 161 and 164 of the Cr.P.C., Mr. Das submits that the victim has implicated the applicant with the offence alleged in the FIR, which is serious in nature and therefore, Mr. Das contended to dismiss the petition.

6. On the other hand, Mr. Hoque, learned counsel for the informant also adopted the submission so advanced by Mr. Das, learned Addl. P.P. and vehemently opposed the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary produced before this Court with the assistance of Mr. Das, learned Additional Public Prosecutor.

8. It appears that the IO has collected sufficient incriminating materials

in the case diary and he has examined the victim and also got her statement under Sections 161 and 164 of the Cr.P.C. recorded in the court and in both the statements she has implicated the applicant with the offence alleged in the FIR. It also appears that the offence is serious in nature and the investigation is still going on and enlarging the applicant on privilege of pre-arrest bail at this stage will misdirect the investigation.

9. Accordingly, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the accused/applicant and therefore, the same is dismissed.

10. Case diary be returned.

JUDGE

Comparing Assistant