

GAHC010174142023



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

Case No. : Bail Appln./2786/2023

BALLY YADAV AND 2 ORS.

S/O LT. HITAI YADAV PERMANENT R/O VILL. ADHUWARI P.S. BENIPATTY
DIST. MADHUBARNI BIHAAR AND PRESENTLY RESIDING AT WARD NO. 7
AMOLAPTTY SIVASAGAR TOWN P.O. P.S. AND DIST. SIVASAGAR ASSAM
2: RAJINDAR DAS

S/O CHARITRA DAS R/O VILL. ADHUWARI P.S. BENIPATTY DIST.
MADHUBARNI BIHAAR AND PRESENTLY RESIDING AT WARD NO. 7
AMOLAPTTY SIVASAGAR TOWN P.O. P.S. AND DIST. SIVASAGAR ASSAM
3: NITISH KUMAR

S/O KRISHAN @ KISHAN YADAV R/O VILL. ADHUWARI P.S. BENIPATTY
DIST. MADHUBARNI BIHAAR AND PRESENTLY RESIDING AT WARD NO. 7
AMOLAPTTY SIVASAGAR TOWN P.O. P.S. AND DIST. SIVASAGAR ASSAM

VERSUS

THE STATE OF ASSAM, REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 22-08-2023

Heard Mr.D. Das, learned counsel for the accused persons. Also heard
Mr.R.J. Barua, learned Addl. P.P. for the State respondent.

This is an application, u/s 439 Cr.P.C. is preferred by three accused persons, namely, 1. Bally Yadav, 2. Rajindar Das and 3. Nitish Kumar who have been languishing in jail house, in connection with Sivasagar P.S. Case No. 78/2023 (G.R. No.162/2023 and PRC No.127/2023) u/s 376/511/427/34 IPC, since 23.5.2023.

The above noted case has been registered on the basis of an FIR lodged by informant Smt.'X' on 22.5.2023, at about 9-30 PM to the effect that on 22.5.2023 at about 2 PM, three employees of the Hotel, where she has been working since last 15 days, attempted to commit rape upon her and also touched different part of her body and also broke her mobile phone and also tried to undress her.

Mr. Das learned counsel for the accused persons submits that after investigation, police submitted charge sheet against the accused persons u/s 376 D/34 IPC and the learned Sessions Judge also framed charge against the accused persons under the said Sections of law and examined two witnesses, including the victim. Mr. Das further submitted that as many as four witnesses have been charge sheeted and out four witnesses two witnesses including the victim have already been examined and the victim woman has not supported the charge framed against the accused persons in the evidence, before the learned Court below, and that the accused are ready to participate in the trial and therefore, it is contended to allow the petition.

On the other hand, Mr. Barua, learned Addl. P.P. also fairly submits that the evidence of the victim woman who was examined by the learned court below as PW 1 has not supported the charge framed against the accused persons.

Having heard the submission of learned Advocates of both sides, I have carefully perused the petition and the documents placed on record and also perused the scanned copy of the record and status report received from the learned Court below.

It appears from the record that the accused persons were arrested on 23.5.2023, and since they are languishing in the jail hazot. Further it appears that charges have been framed against the accused persons Further it appears that as many as four witnesses have been cited in the charge sheet and out of four witnesses, two witness, including the victim have already been examined.

Having perused the evidence of the victim woman and also considering the material place on record, this Court is of the view that a prima facie case for granting bail to the accused persons are made out. And accordingly, this Court is inclined to allow this petition. It is provided that on furnishing a bond of Rs.50,000/- each with one surety of like amount to the satisfaction of the learned Addl.Sessions Judge, Sivasagar, the accused persons be enlarged on bail in connection with Sessions Case No.73(S-S)/2023.

This privilege is however subject to the condition that they shall remain present in the learned Court below on each and every date and shall not indulge in tampering the witness.

In terms of the above, bail petition stands disposed of.

JUDGE

Comparing Assistant