

GAHC010175782023



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

Case No. : AB/2792/2023

LALMAMUD ALI AHMED
S/O- LATE SIRAJ UDDIN, VILL- SILAPATANI, P.S. PATACHARKUCHI, DIST.-
BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.08.2023

Heard Mr. H. A. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Lalmamud Ali Ahmed*, who is apprehending his arrest in connection with PRC Case No. 71/2023 under Sections 341/294/376/511 of the Indian Penal Code (corresponding to Patacharkuchi P.S. Case No. 182/2022).

The accusation in this case is that on 24.05.2022, the victim of the

case has lodged an FIR before the Superintendent of Police, Bajali district, *inter alia*, alleging that the present petitioner has forcefully committed rape on her. After receipt of the said FIR, it was forwarded to the Officer-in-Charge of the Patacharkuchi Police Station who registered Patacharkuchi P.S. Case No. 182/2022 and initiated the investigation. Ultimately, on completion of the investigation, charge-sheet was laid against the present petitioner under Section 341/294/376/511.

The learned counsel for petitioner has submitted that the present petitioner was shown as an absconder in the charge-sheet and learned Committal Court issued summons to the present petitioner. Learned counsel for the petitioner has submitted that on 20.05.2023, the Committal Court has also issued summons to the petitioner and after receiving of the summons, the present petitioner filed an adjournment petition before the learned Committal Court on 04.08.2023. However, on that day, the petition was rejected by the learned Committal Court and non-bailable warrant of arrest was also against present petitioner and hence, the present petitioner is apprehending that he may be detained in connection with this case.

On the other hand, learned Additional Public Prosecutor submits that in the instant case, the Trial Court has correctly rejected the adjournment petition filed by the present petitioner on 04.08.2023 and issue non-bailable warrant of arrest against him. Hence, this is not a case which is covered under Section 438 of the Code of Criminal Procedure, 1973.

I have considered the submissions made by learned counsel for both sides and have perused the scanned copy of the PRC Case No. 71/2023 along with case diary of Patacharkuchi P.S. Case No. 182/2022, which was called for in connection with this case.

Though, the allegation against the present petitioner is that he raped the victim girl who had lodged the FIR against him and after the investigation, on finding materials against, charge-sheet was laid in the instant case, the petitioner has been shown as an absconder in the charge-sheet. However, learned Committal Court rightfully issued summons to the present petitioner on the first instance. It appears that on two subsequent dates the present petitioner had filed adjournment petition and on the first instance, the Committal Court has allowed the adjournment petition. It is only on the second day when the petitioner failed to justify his absence, the learned Committal Court rejected the adjournment petition of the present petitioner and had issued non-bailable warrant of arrest against the present petitioner.

The order dated 04.08.2023 has not been challenged by the present petitioner. Further, as the allegation is only of attempt of rape, where the learned Committal Court has the jurisdiction to consider the prayer for bail if such an application is filed before that Court as there is no statutory bar for the same.

For reasons mentioned hereinabove, this Court is considered opinion that this is not a fit case to issue an order under Section 438 of the Code of Criminal Procedure, 1973 in favour of the present petitioner. However, the petitioner is at liberty to appear before the learned Committal Court and pray for regular bail there, if so advised.

With this observation, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant