

GAHC010181412023



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

Case No. : AB/2893/2023

USMAN ALI
S/O LATE ABDUL HEKIM,
VILL.- DURABANDHI GAON,
P.O.- LOCHANABORI, P.S.- MOIRABARI, DIST.- MORIGAON, ASSAM, PIN-
782126.

VERSUS

THE STATE OF ASSAM
THROUGH THE P.P., ASSAM.

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.10.2023

Heard Mr. A. Alam, learned counsel for the petitioner. Also heard Ms. S.H. Bora, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Usman Ali, who is apprehending his arrest in connection with Moirabari P.S. Case No. 162/2023 under Sections 120B/364/342/302/34 of the Indian Penal Code.

The gist of accusation in this case is that on 14.07.2023, one Mustt. Bedena Khatun lodged an FIR before the Officer-In-Charge of Moirabari Police Station against three accused named in the FIR, including the present petitioner, *inter-alia*, alleging that the first informant, along with her husband and her three children were staying in the State of Kerala from 2021 and on 01.01.2022, she had lodged an FIR against one Md Abu Taher alleging that the said FIR named accused had kidnapped the daughter of the first informant and thereafter, committed rape on her.

It is further stated in the FIR that the said Abu Taher pressurized the first informant and her husband to amicably settle the said case outside the Court.

It is further stated in the FIR that on 05.07.2023, the informant along with her husband and the present petitioner went to Kerala for discussing the matter regarding the case pending in Kerala. However, they failed to reach at amicable settlement and after that on 6th July 2023, the husband of the informant left their company and on 9th July 2023, the first informant returned back to Assam along with her daughter as well as the present petitioner in a flight and on the next date, i.e. on 10th July 2023, the Railway Police of Burdwan Railway Station informed the Moirabari Police Station about the death of the husband of the informant Akbar Ali at Burdwan Railway Station. On receipt of the FIR, Moirabari P.S. Case No. 162/2023 has been registered.

Learned counsel for the petitioner has submitted that apparently from FIR, it appears that the husband of the petitioner died at Burdwan Railway Station, however, the present petitioner was nowhere at Burdwan Railway Station at

that point of time, rather, he came back from Kerala along with the wife of the deceased on flight on the previous day, i.e. on 09th July, 2023 and the dead body was recovered only on the subsequent date, i.e. on 10th July, 2023 at Burdwan Railway Station.

It is also submitted by the learned counsel that the present petitioner only tried to help the first informant and her husband to reach at amicable settlement and it is further submitted that the first informant was in favour of reaching at an amicable settlement and her husband was opposed to such a settlement and there was a discord between husband and wife over the issue.

It is also submitted by the learned counsel that the present FIR has been filed by the informant only after she was pressurized by some people, wherein the name of the present petitioner has been falsely implicated.

On the other hand, learned Additional Public Prosecutor has placed the case diary of Moirabari P.S. Case No. 162/2023 and has stated that though there is no direct evidence as on date against the present petitioner, however, there are materials to show that he threatened the deceased as well as his wife when they were in Kerala and therefore, there may be a possibility of his involvement in the death of the husband of the first informant.

Learned Additional Public Prosecutor has also submitted that as on date, the cause of death of the husband of the informant is yet to be ascertained as the post-mortem report of the deceased is yet to be collected by the Investigating Officer.

I have considered the rival submissions made by learned counsel for the parties, considering the fact that as on date apart from mere suspicion that the death of the husband of the informant may be homicidal and the petitioner may have a role in it, there is nothing on record to show the involvement of the

present petitioner in the death of the deceased of the first informant. However, it also appears that investigation is still going on.

Considering all aspects of the matter, this Court is of considered opinion that if the present petitioner co-operates with the Investigating Officer, his custodial detention may not be necessary for fair completion of the investigation.

In view of above, the above named petitioner, is hereby directed to appear before the Investigating Officer of Moirabari P.S. Case No. 162/2023 within a period of 10(ten) days from the date of this order and co-operate in the investigation. If he does so within the stipulated period of time, in the event of his arrest in connection with Moirabari P.S. Case No. 162/2023, he shall be allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority subject to the following conditions that:-

(i) he shall not directly or indirectly make any inducement, threat or promise to the first informant of the case or to any person who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer; and

(ii) he shall co-operate with the Investigating Officer.

With the above observations, this anticipatory bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant