

GAHC010201412022



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

Case No. : AB/2906/2022

NAZMUL ISLAM
S/O SIRAJ UDDIN
R/O VILL- GERUATI
P.S. KHATOWAL
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

02.02.2023

Heard Mr A M Bora, learned Senior Counsel, assisted by Mr V A Choudhury, learned counsel appearing on behalf of the petitioner and Mr D Das, learned Additional Public Prosecutor, appearing on behalf of the State of Assam.

2. Case Diary is received.

3. By filing this application under Section 438 CrPC, the petitioner, Nazmul Islam, is praying for granting him pre-arrest bail in connection with Khatowal PS Case No. 25 of

2022, under Sections 341/328/376/506 of the Indian Penal Code, 1960, read with Section 66 E/67 A of the IT Act and Section 25 (1-A) of the Arms Act.

4. The brief facts of the case is that the informant has lodged the FIR before the Officer-In-Charge, Khatowal Police Station, under Nagaon District, stating *inter alia*, that on last January, 2022, when she was proceeding from her residence towards Rupohi College and when she was waiting for the vehicle, at that time, the petitioner came and offered to give her lift in his private car. Accordingly, the victim boarded in the vehicle of the petitioner. It is alleged in the FIR that on the way, the petitioner offered her some water to drink and after drinking such water, she became unconscious. When she regained her senses, she found herself confined in a room without her clothes. The petitioner threatened her with dire consequences by showing a pistol and the petitioner had committed bad acts with her and restrained her for the whole day in the said room. The petitioner also took some obscene photographs of her in his mobile phone. It is further alleged that on 11.05.2022, the photograph(s) of her whole body was uploaded in the internet and two boys of her village found such photograph in their mobile and sent it to her mobile.

5. On receipt of the complaint, the case was registered as aforesaid. .

6. Learned Senior Counsel, Mr A M bora, has argued that the victim is a married woman and the petitioner had love affairs with the victim. Both the petitioner and the victim decided to marry, but unfortunately due to some family pressure of the informant, she was compelled to marry another person in the year 2018.

7. It is further submitted that in the FIR, the victim has not disclosed that the accused had committed rape on her. It is also submitted that the informant becoming senseless in the car, after drinking the water, then suddenly, waking up in a room is very unrealistic, as because, a woman of 23 years being carried by a 28 year old man to the room, all by himself, that too, without being noticed by any person, is totally false and baseless. Hence, Section 376 IPC is not attracted in the case.

8. It is also contended by the learned Senior Counsel that the incident occurred in the month of January 2022 and the FIR was lodged on 15.05.2022, i.e., after a gap of almost 4 (four) months. No explanation has been given in the FIR regarding such delay in lodging the same. Further, the victim/informant herself admitted that she received her obscene photographs from two boys of her village and, thereafter, they had circulated the said photographs to other persons. As such, there is no allegation against the petitioner that he had circulated such photographs of the victim/informant. So, Section 66 E/67 A of the IT Act are not attracted against the petitioner in this case. Under such backdrop, the petitioner may be protected under the privilege of pre-arrest bail.

9. On the other hand, Mr D Das, learned Additional Public Prosecutor has submitted that during investigation, the Investigating Officer has collected sufficient incriminating materials against the petitioner, including the photographs of the victim. Further, it is submitted that in the statement recorded by the Magistrate, the victim has also implicated the accused petitioner to be involved in the case. Under such backdrop, it is not a fit case where the privilege of pre-arrest bail can be extended to the petitioner.

10. I have considered the submissions made by the learned counsel for both the parties. I have also perused the Case Diary.

11. The statement of the victim was recorded under Section 164 CrPC, wherein she had clearly stated that when she was travelling in the vehicle with the petitioner, she drank some water, on being offered by the accused petitioner and subsequently, she became unconscious. When she regained her sense, she found herself in a confined room and her eyes were covered with clothes. After removing the clothes from her eyes, she found the petitioner in the said room. The accused petitioner threatened her by showing pistol and committed rape upon her by using force. After that, she was compelled to take some liquid forcefully, by the petitioner and after taking the same, she became dizzy and thereafter, the accused petitioner removed her clothes and took several photographs on his mobile and in the evening, he brought her to Rupohi and threatened her that if she

disclosed about the incident to anybody, he would kidnap her brothers and sisters. About two days back, the petitioner uploaded her naked photographs in the Facebook, Instagram etc., which became viral.

12. After going through the statement of the victim/informant as well as her photographs seized during investigation and the statements of other witnesses recorded by the Investigating Officer, this Court is of the opinion that the privilege of pre-arrest bail cannot be extended to the petitioner and accordingly, the prayer for pre-arrest bail made on his behalf is rejected.

13. With the aforesaid observations and directions this Anticipatory Bail Application stands disposed of.

14. Send back the Case Diary.

JUDGE

Comparing Assistant