

GAHC010204882023



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

Case No. : AB/3105/2023

INAMUL HAQUE
S/O LATE SORULORA
R/O VILL- NAHARANI
P.S. DERGAON
DIST. GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

05.10.2023

Heard Mr. T.J. Mahanta, learned Senior Counsel, assisted by Mr. T. Gogoi, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under section 438 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner, namely, Inamul Haque, who is apprehending his arrest in connection with Dergaon P.S. Case No. 133/2023 under Sections 376/506 of the Indian Penal Code, corresponding to G.R. Case No. 451/2023.

The gist of accusation against the present petitioner, in brief, is that on 2nd August, 2023, the victim lodged an FIR before the Superintendent of Police, Golaghat district, *inter-alia*, alleging that the present petitioner had forcefully established physical relationship with the victim in the year 2017 and since then by putting her under fear that he will kill the brother of the victim as well as the victim. It is also stated in the FIR that in the month of December, 2022, the petitioner came to the house of the victim and again forcefully sexually assaulted her in absence of her family members. On receipt of the FIR, Dergaon P.S. Case No. 133/2023 has been registered.

Learned Senior Counsel for the petitioner has submitted that the victim has made false allegation against the present petitioner and bare reading of the FIR would disclose that the incident alleged against the present petitioner occurred 6 years ago for the last time it occurred 9 months ago and no just reasons has been shown for delay in lodging the FIR.

It is further submitted by learned Senior Counsel for the petitioner that the incident occurred on 2nd August, 2023 prior to lodging of the FIR, by the victim the present petitioner had lodged an FIR against the family members of the victim, which was not registered by the Officer-In-Charge of Dergaon Police Station and therefore, the petitioner was compelled to institute a complaint case on 17.08.2023 which was registered as C.R. Case No. 87/2023.

Learned Senior Counsel for the petitioner has submitted that the victim

has lodged a false case against the present petitioner as a counter-blast to the FIR lodged against her family members.

Learned Senior Counsel for the petitioner also submits that for the arguments sake even assuming that the allegations made in the FIR were true, it has to be consensual relationship as because the age of victim is 39 years and there is no plausible reasons for delay of 6 years in lodging the FIR.

On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor has placed the case diary of Dergaon P.S. Case No. 133/2023 and has submitted that the Investigating Officer has recorded the statement of the victim woman under Section 164 of the Code of Criminal Procedure, 1973, where also the present petitioner has mentioned that the incident occurred for the first time in the year 2017.

Having considered the submissions made by learned counsel for both sides and having gone through the materials available on record, considering the fact that the incident occurred 6 years ago and no FIR was lodged since last 6 years and also considering the fact that the present petitioner has also lodged the FIR against the family members of the victim girl, custodial detention of the present petitioner does not appear to 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 Dergaon P.S. Case No. 133/2023 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 Dergaon P.S. Case No. 133/2023, 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