

GAHC010206792023



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

Case No. : AB/3146/2023

SABEL UDDIN
S/O LT. SUKUR ALI R/O VILL. KANHARA P.S. GORAIMARI DIST. KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : A W AMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.09.2023

Heard Mr. S. Nawaz, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State.

This application under Section 438 of the Code of Criminal Procedure, 1973 is filed by the petitioner, namely, *Sabel Uddin* who is apprehending his detention in connection with PRC Case No. 131/2023 under Sections 354A/376/506 of IPC.

The gist of accusation in this case is that on 12.06.2020, the victim lodged an FIR before the Officer-In-Charge of Boko Police Station, *inter alia*, alleging

that the present petitioner took an amount of Rs.10,000/- from her with a promise of arranging an employment of a cook in the School near her house. However, he did not provide any such employment and instead he started behaving inappropriately towards the victim and on 11.06.2020 at about 2 PM, the petitioner took the victim on a motorcycle from Goraimari Bazar telling her that she would be taken to the block office, however, while returning home he coerced to victim to have sexual intercourse with him and thereafter he abandoned the victim. On receipt of the said FIR, Boko P.S. Case No. 620/2020 was registered.

It is submitted by learned counsel for the petitioner that after completion of the investigation, charge-sheet was laid against the present petitioner under Section 354A/376/506 of Indian Penal Code showing the present petitioner as on bail in column No. 4 of the charge-sheet. It is also submitted by learned counsel that during pendency of investigation the petitioner had approached this Court by filing an anticipatory bail application, namely, AB No. 1953/2020 wherein he was allowed to go on interim anticipatory bail by order dated 17.08.2020 and after obtaining the said order, the petitioner appeared before the Investigating Officer and obtained interim anticipatory bail. Thereafter, the said interim bail was cancelled by the Court by its order dated 06.10.2020. It is submitted by learned counsel for the petitioner that during the period of investigation, the petitioner had cooperated in the investigation while on interim bail.

Learned counsel for the petitioner has further submitted that now the PRC Case No. 131/2023 is pending before the Court of learned Judicial Magistrate, First Class, Boko who has issued the summons against the present petitioner, fixing 07.10.2023 for his appearance. It is submitted by the learned counsel for the petitioner that though learned Committal Court has issued summons,

however, the present petitioner apprehends that he may not be allowed to go on bail on his appearance before the learned Committal Court due to embargo of Section 437(1)(ii) of Code of Criminal Procedure, 1973 read with Section 209(a) of Code of Criminal Procedure as one of the offence under which the case has been charge-sheeted is 376 for which the maximum punishment is prescribed is imprisonment for life. Learned counsel for the petitioner has prayed for allowing to remain on bail at least till the committal period.

It is also submitted by learned counsel for the petitioner that the Investigating Officer while submitting the charge-sheet has mentioned in the column No. 7 of the charge-sheet that the victim refused to undergo medical examination when she was requested to do so by the Investigating Officer.

It is also submitted that during the investigation, the Investigating Officer could not collect any evidence regarding the allegation of taking Rs.10,000/- by the present petitioner from the victim.

Learned Additional Public Prosecutor has submitted that offence alleged in the instant case is serious in nature and the victim has implicated the present petitioner in her statement under Section 164 of the Code of Criminal Procedure, 1973.

I have considered the submissions made by learned counsel for the petitioner as well as learned Additional Public Prosecutor and have perused the scanned copy of the case record.

It appears that the offence involved in this case is serious in nature, however, it is also appears that the petitioner had cooperated during the investigation and charge-sheet was laid showing him as on bail in column No. 4 of the charge-sheet. It is also a fact that the Trial Court is the best Court to decide as to whether to grant of bail to an accused during the pendency of trial

or not. However, as the case is now pending before the Committal Court and Committal Court have to overcome embargo of Section 437(1)(ii)/209(a) of Code of Criminal Procedure, 1973 and there is every likelihood that the petitioner may not be allowed to go on bail if he appears before the Committal Court in pursuant the summons issued to him. Hence, it is directed that the petitioner shall appear before the Court of learned Judicial Magistrate, First Class, Boko on 07.10.2023 i.e., the date fixed for his appearance and said Court shall allow him to go on bail till the committal proceeding is over on furnishing a bond of Rs.30,000/- (Rupees Thirty Thousand) only with one surety of like amount to the satisfaction of Committal Magistrate subject to the condition that:-

1. that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the learned Trial Court;
2. that the petitioner shall cooperate in his trial;
3. that the petitioner shall appear before the Trial Court as and when so required by the learned Trial Court.

After the case is committed to the Trial Court, the petitioner shall make a fresh application for bail before the learned Trial Court and the learned Trial Court shall be free to consider the bail application on its own merit.

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

JUDGE

Comparing Assistant