

GAHC010215832023



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

Case No. : AB/3305/2023

MD AMZAD ALI
S/O ALI HUSSAIN
R/O DAUPATARI BAZAR
P.O. AND P.S. CHANGSARI
DIST. KAMRUP

VERSUS

THE STATE OF ASSAM AND ANR
REP. HEREIN BY ITS PP, ASSAM

2:XXX
FATHER- JIAUR RAHMAN
VILL- SUNGABUDI
P.S. ORANG
DIST. UDALGURI
ASSA

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.10.2023

Heard Mr. S. Borthakur, learned counsel for the applicant and also heard Mr. K.K.

Das, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Changsari P.S. Case No.308/2023, under Section 376 IPC read with Section 4 of the POCSO Act, this application, under Section 438 Cr.P.C., is preferred by applicant, namely, Md. Amzad Ali, for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Smt. X (name withheld), aged 17 years, on 14.09.2023. The essence of allegation made in the said FIR is that on 12.09.2023 her relative brother Hanif Ali left her at Changsari market, but he did not come to pickup her and at about 9:00 p.m. one person taken her to his house assuring that on the next day morning he will make necessary arrangement for sending her to her native place and provided her one room behind his house and at about 11:00 p.m. at night while she was sleeping in the said room, the person entered into her room and committed rape upon her under threat.

4. Mr. Borthakur, learned counsel for the applicant submits that the applicant is innocent and no way involved with the offence alleged in the FIR and that there is delay in lodging the FIR and also that the victim girl has refused to undergo medical examination and she was recovered from a different place and that the applicant is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

5. On the other hand, Mr. K.K. Das, learned Additional P.P. has produced the case diary before this Court and submits that the I.O. has collected materials against the applicant.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Das, learned Additional P.P.

7. In view of the materials collected so far in the case diary, specially the statement of the victim girl recorded under Section 161 as well as under Section 164 Cr.P.C. and also

the statements of other witnesses recorded till date, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant. Accordingly, this anticipatory bail application stands dismissed.

8. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant