

GAHC010226232022



THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Case No: **Bail Appln. 2957/2022**

Md. Sultan Ali

S/O Miraj Ali

R/O Baralimari Betani

P.S. Bhuragaon

Dist. Morigaon, Assam

.....petitioner

VERSUS

The State of Assam

.....respondent

:: BEFORE ::

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHOUND

For the Petitioner : Ms. S.K. Nargis

For the Respondent : Mr. M.P. Goswami (Addl. P.P.,)

Date of Hearing : **24.01.2022**

Date of delivery of
Judgment and Order : **01.02.2023**

JUDGMENT (CAV)

1. Heard Ms. S.K. Nargis, learned counsel appearing for the petitioner as well as Mr. M.P. Goswami, learned Addl. P.P. appearing for the State respondent.
2. An application under Section 439 Cr.P.C, is preferred by the petitioner, namely, Md. Sultan Ali, who is languishing in jail hajot since 14.07.2021, in connection with Sessions Case No. 134/2021 arising out of Bhuragaon P.S. Case No. 85/2021, registered under Sections 448/376(2)(J)/376(2)(L)/109/214/506/34 IPC.
3. The petitioner is facing trial from the jail. It is submitted that all the witnesses have been examined. The trial is pending only for the evidence of the I/O. There is no scope of tampering of evidence as all the witnesses including the victim has been examined as prosecution witnesses. The learned counsel for the petitioner also took us through the merits of the case stating that the evidence against the petitioner is opaque and there is every possibility that the petitioner may be acquitted from the charges of rape. The petitioner is in the jail since 14.07.2021 and he is suffering immensely as he is innocent. It is submitted that the petitioner is from a reputed family and he is the owner of extensive land and other properties. Due to a land dispute a false case been foisted against him. The witnesses are all interested witnesses as they are related to the victim. There is no medical evidence that the victim was sexually assaulted. The learned counsel for the petitioner also highlighted the contradictions in the evidence.
4. The learned Addl. P.P. has raised serious objection stating that this case is the fag end of

the trial. The gravity of the offence and the import of the sections under which the accused/petitioner is booked cannot be construed as eligible for bail. As the petitioner is a formidable character, being an influential person he, being at large will affect the trial proceedings against him. It cannot be ignored that the victim is specially abled, being unable to speak.

5. I have given my anxious considerations to the submissions at the Bar. I would like to filter the statements of the witnesses under Section 161 Cr.P.C as well as the testimonies in the Court, as the trial is ongoing and the I/O is yet to be examined. The FIR reveals that on 20.05.2021 at around 2.00 P.M., the petitioner along with his co-accused entered into the victim's house when she was alone and committed rape on her. When the informant's cousin saw the petitioner and the other accused, they fled the scene. On the following date, the petitioner and his co-accused went to the informant's house and threatened her with dire consequences and offered Rs. 10,000/- to the victim. Both the petitioner and his co-accused threatened them not to inform the police about the incident.

6. I have also perused the scanned copies of the LCR. It is true that all the witnesses have already been examined and his case is pending only for the evidence of the I/O. However, I have considered the magnitude of the offence and the severity of punishment, in the event of ultimate conviction. Impediment of trial cannot be ruled out. This Court is not seized of matter, like in a trial to take into consideration all the nitty-gritties of the merits of the case at present. The trial has to progress without any hurdle. The instant case is not a case where the trial is being procrastinated or where the personal liberty of the accused/petitioner is being curtailed due to protraction of trial. Trial is proceeding smoothly and is at its fag end. The FIR was lodged on 23.05.2021 and this case is proceeding at a good pace. In fact there

appears to be no justified ground to admit the accused/petitioner to bail, at this stage of trial.

7. In view of the forgoing discussions, petition is rejected.

JUDGE

Comparing Assistant