

GAHC010228442023



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

Case No. : AB/3451/2023

AYUB ALI
S/O HASSEN ALI
R/O BECHAMARI
P.S. DHING
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 21.11.2023

Heard Mr. S. M. Abdullah, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

This application has been preferred under Section 438 of Code of Criminal

Procedure, 1973, by the petitioner, namely, Ayub Ali, who is apprehending his arrest in connection with Dhing P.S. Case No. 130/2023 registered under Sections 376 of IPC.

The gist of the accusation in this case is that on 02.08.2023, one Rubina Khatun lodged an FIR before the Officer-in-Charge of Ahomgaon Police Out Post under Dhing Police Station, *inter-alia*, alleging that on 01.02.2023 when the mother of the first informant was working in paddy field she was pushed down in the mud which was seen by the younger sister of the first informant.

It is further alleged that in the FIR that the petitioner had forcible sexual intercourse with the sister of the first informant in the house of the first informant, when nobody was there and thereafter, he committed the rape of the sister of the first informant on six to seven subsequent times also, as a result of which the sister of the first informant became pregnant and she was administered some tablets by the accused persons named in the FIR including the present petitioner for miscarriage of the pregnancy.

Learned counsel for the petitioner has submitted that the co-accused of this case has been granted anticipatory bail by the Court of learned Additional Sessions Judge No.2, Nagaon.

It is further submitted by the learned counsel for the petitioner that the allegations levelled against the present petitioner in the FIR is false and the FIR has been lodged after a delay of a period of six months which itself shows that the allegations levelled against the petitioner is not true.

On the other hand learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner and has produced the case diary of Dhing P. S. Case No. 130/2023 which was rejected by the court in connection with this case.

It is submitted by the learned counsel for the petitioner that there are sufficient incriminating materials against the present petitioner in the case diary.

I have considered the submissions made by learned counsel for both the sides and have perused the material available in the case record including the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973.

Though there appears to be a delay in lodging of the FIR by the sister of the victim however, considering the nature of offence alleged in the FIR as well as the incriminating materials available against the present petitioner in the case diary, this Court is not inclined to grant anticipatory to the present petitioner at this stage.

Hence, prayer of grant of anticipatory bail is rejected.

Send back the case diary.

This anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant