

GAHC010237712022



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

Case No. : Bail Appln./3156/2022

SADDAM HUSSAIN
S/O DANEJ ALI,
VILL.- GOLAPARA PART- IV,
P.S.- ABHAYAPURI,
DIST.- BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM.

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

03.01.2023

Heard Mr. M. Khan, learned counsel for the accused-petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Saddam Hussain has prayed for his release on bail in connection with

Abhayapuri Police Station Case no. 398/2022, registered for offences under Sections 120B/365/328/376/34, Indian Penal Code [IPC].

3. The accused-petitioner was arrested and produced before the Court of learned Sub-Divisional Judicial Magistrate [M], North Salmara, Abhayapuri on 10.11.2022. On being so produced, the accused-petitioner was remanded to custody and since then, he is in custody.

4. The First Information Report [FIR] was lodged by the informant on 05.09.2022 wherein she arraigned the accused-petitioner as accused no. 1 [A-1]. The two other accused persons viz. Ramej Ali [A-2] and Alimuddin [A-3] were also arraigned in the FIR. In the FIR, the informant had *inter alia* alleged that in the night intervening 14.06.2022 and 15.06.2022, the accused persons abducted her from her residence allegedly with the intention and to indulge in physical act with her by the accused-petitioner and thereafter, to hand over the informant to an organized racket involved in trafficking of women. The informant had further alleged that after being abducted, she was detained in a public toilet near Golapara Kali Mandir wherein the accused-petitioner committed rape on her in the night against her will. It was also alleged by the informant that she was compelled to consume alcohol which made her unconscious and thereafter, she was taken to Delhi to sell her there. Due to efforts of her family members, she was recovered from Delhi on 14.08.2022.

5. Mr. Khan, learned counsel for the accused-petitioner has refuted the allegations of abduction and commission of rape, alleged against the accused-petitioner. He has submitted that the informant was initially married with one Rajibul Islam but after about 1 [one] year of the said marriage, the informant eloped with another person named Sohikul Islam during the subsistence of her earlier marriage. Subsequently, she married to Sohikul Islam but at the same time, the informant was also maintaining relationship with her earlier husband, Rajibul Islam. Rajibul Islam used to stay at New Delhi and on 16.06.2022, the informant went to New Delhi to meet her first husband. The accused-petitioner was requested by the informant who is known to the accused-petitioner from earlier, to take her to the railway station. All other allegations leveled against the accused-petitioner are false.

6. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, has submitted that the Investigating Officer [I.O.] of the case could not enquire about veracity of above claims, advanced on behalf of the accused-petitioner, either from Rajibul Islam or from Sohikul Islam. The informant in her statement recorded under Section 164, CrPC, had implicated the accused-petitioner for forceful sexual assault upon her. The medical examination of the informant which was done after one month, does not throw any light regarding commission of rape or otherwise.

7. The informant, in the FIR, has stated that she was recovered from Delhi on 14.08.2022. The FIR was lodged on 05.09.2022 after a period of delay. There is no explanation for the delay of 22 days occurred in instituting the FIR. In the FIR, the informant had mentioned that she was abducted on 14.06.2022 when her husband Sohikul Islam was not in the residence. Sohikul Islam has not been examined by the I.O. of the case for finding out the veracity of such statement made by the informant in the FIR. Be that as it may. The accused-petitioner is in custody since 10.11.2022. The materials in the case diary go to suggest that the investigation of the case has progressed to a substantial extent.

8. Considering the facts that the accused-petitioner is in custody for 55 days since 10.11.2022; and the investigation of the case has progressed to a substantial extent, this Court is of the considered view that further custodial detention of the accused-petitioner is not necessary for the purpose of carrying out further investigation of the case and his release on bail, at this stage of investigation, is unlikely to bring any adverse effect in the further investigation of the case, provided he continues to extend his assistance and co-operation in the further investigation of the case.

9. Accordingly, it is directed that the accused-petitioner shall be released on bail on furnishing a bail bond of Rs. 25,000/- with one local surety of the like amount to the satisfaction of the learned Sub-Divisional Judicial Magistrate [M], North Salmara, Abhayapuri, subject to the conditions that :-

[i] the accused-petitioner shall co-operate with the investigation and make himself

available for interrogation whenever required by the Investigating Officer [I.O.] of the case;

[ii] the accused-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

[iii] the accused-petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

[iv] the accused-petitioner shall maintain law and order and he shall not commit an offence similar to the offence of which he is accused, or of the commission of which he is suspected; and

[v] the accused-petitioner shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge sheeted in the case.

10. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant