

GAHC010238792023



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

Case No. : AB/3651/2023

MD. BABU ALI @ RIYAJUL HOQUE @ IYJUL HOQUE
S/O MD. MANBAR ALI @ ISMAIL ALI
R/O VILL- RAMRAIPARA
P.O. PATHARIGHAT,
P.S.SIPAJHAR
DIST. DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M HOQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

16.11.2023

Heard Mr. M. Hoque, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam.

This application under Section 438 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Md. Babu Ali@Riyajul Hoque @ Iyjul Hoque, who is apprehending his arrest in connection with PRC Case No. 2849/2022 under Sections 493/376 of the Indian Penal Code.

The accusation against the present petitioner is that the victim of this case has lodged an FIR before the Officer-In-Charge of Patharighat Police Out-post under Sipajhar Police Station on 08.04.2022, *inter-alia*, alleging that the petitioner on the pretext of having a love affair with the first informant and on the pretext of marrying her used to have sexual relationship with the informant.

It is further alleged in the FIR that the petitioner used to harass the first informant in absence of her husband. After lodging of the FIR, Sipajhar PS Case No. 147/2022 was registered under Section 493/376 of the Indian Penal Code and thereafter, after completion of the investigation, charge-sheet was laid against the present petitioner under Section 493/376 of the Indian Penal Code showing the name of the present petitioner in column No. (ii) of the charge-sheet as an absconder.

Learned counsel for the petitioner has submitted that during the pendency of the investigation, police never visited the house of the present petitioner and he was not aware of the pending investigation against him.

It is further submitted by learned counsel for the petitioner that though the petitioner has received summons from the Court of learned Judicial Magistrate First Class, Darrang, Mangaldai, however, as one of the offences involved in this case is under Section 376 of the Indian Penal Code and as the maximum punishment prescribed for the said offence may extend to life imprisonment, therefore, due to embargo in Section 437 (1) (i) of the Code of Criminal Procedure, 1973, the Court of Judicial Magistrate First Class, Darrang, Mangaldai may not allow the petitioner to go on bail.

It is further submitted by learned counsel for the petitioner that if under such circumstances, the petitioner appears before the Committal Court, the Committal Court would be left with no other option, but to reject his bail application and remand him to custody under Section 209 (a) of the Code of Criminal Procedure, 1973 and therefore, he apprehends that even though summons has been issued against the present petitioner, he may be detained behind the bars if he appears before the learned Committal Court.

On the other hand, learned Additional Public Prosecutor opposes the grant of bail to the present petitioner on the ground that the offence involved in this case is of serious nature.

I have considered the submissions made by learned counsel for the petitioner as well as learned Additional Public Prosecutor.

On perusal of the scanned copy of the case record which includes the victim's statement recorded under Section 164 of the Code of Criminal Procedure, 1973 it appears that the victim has stated there that she was having a love affair with the present petitioner and on the pretext that the petitioner would marry the said victim, they were also having physical relationship with each other.

It also appears that though learned Committal Court has issued summons to the present petitioner, the apprehension as mentioned in the submissions made by learned counsel for the petitioner that as the Committal Court is a Court of Judicial Magistrate First Class, hence the embargo of Section 437 (1)(i) read with Section 209(a) of the Code of Criminal Procedure, 1973 the Committal Court may not grant bail to the present petitioner, even if he appears before the said Court in compliance with the summons received by him.

Also considering the submissions made by learned counsel for the

petitioner that the petitioner is ready to face trial and co-operate in his trial, this Court is of the considered opinion that custodial detention of the present petitioner may not be necessary for fair completion of the trial of this case, if he co-operates in the investigation.

In view of above, this anticipatory bail application is hereby disposed of with a direction that the petitioner shall appear before the Court of learned Chief Judicial Magistrate, Darrang at Mangaldai on 04.12.2023 in compliance with the summons issued to him by the said Court and if he does so on the said date, on his appearance, the learned Committal Court shall allow the present petitioner to go on bail of Rs. 30,000/- with a suitable surety of like amount by imposing any condition which the said Committal Court deems fit to impose.

With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant