

GAHC010240372022



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

Case No. : AB/3484/2022

K MONI MOHAN SINGHA @ MONI MOHAN SINGHA
S/O LATE BIDYA NATH SINGHA
VILL- SUNDARI PART-IV, P.O. SUNDARI, P.S. KACHUDARAM, DIST.
CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.01.2023

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner; Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam; and Ms. J. Ghosh, learned counsel appearing for the informant.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. K. Moni Mohan Singha @ Moni Mohan Singha has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Kachudaram Police Station Case no. 53/2020 [G.R. Case no. 2188/2020], registered for the offence under Section 376, Indian Penal Code [IPC].

3. The First Information Report [FIR] is lodged by the informant on 09.05.2020 against the petitioner herein stating *inter alia* that the informant is a widow belonging to the below poverty line. The name of the informant's husband was enlisted in the list of beneficiaries of Pradhan Mantri Awas Yojana [PMAY] in respect of Hatikhal Gaon Panchayat. In order to get allotment of the said PMAY house against the ID no. 1670691, when the informant met the petitioner, he demanded a sum of Rs. 10,000/- and accordingly, the said amount was paid by the informant. Thereafter, the petitioner continued to assure the informant that the PMAY house would be allotted within a short period of time. Despite elapse of sufficient time, the petitioner did not make any arrangement for allotment of the PMAY house. On 29.05.2022, the informant had gone to the house of the petitioner in order to get information in the matter of allotment of the PMAY house. But the petitioner had forcefully committed rape upon her. The matter was informed to the village elders and it is as per the advice of the village elders, the FIR has been lodged.

4. Mr. Barbhuiya, learned counsel for the petitioner has submitted that on the date of the alleged incident, the petitioner was serving as Gram Rozgar Sahayak [GRS] on contractual basis under Hatikhal Gaon Panchayat. At present, he is posted at Sonabarighat Gaon Panchayat under Sonai Development Block. Mr. Barbhuiya has submitted that the FIR was lodged on wrong premises and there was no such incident of committing rape upon the informant on 09.05.2020. It is further submitted by Mr. Barbhuiya that a village meeting was convened on 29.05.2020 for amicable settlement of the matter by calling the village elders under 20 no. Sundari Gaon Panchayat and in the said meeting, the informant was also present. The matter was discussed in the said meeting and it was decided by the petitioner and the informant to enter into a memorandum of compromise as the FIR was a result of

misunderstanding of facts. Mr. Barbhuiya has further referred to Anneure-5, annexed to the case papers, to submit that the informant has forwarded a letter to the Officer In-Charge, Kachudaram Police Station stating that the matter of dispute had already been settled amicably between the informant and the petitioner with the active interference of the village elders and relatives and the informant has expressed that she does not want to proceed further with the FIR, earlier lodged by her. An affidavit to that effect has also been executed by the informant on 08.06.2020. Mr. Barbhuiya has submitted that the said affidavit is part of the case papers as Annexure-6.

5. Mr. Goswami, learned Additional Public Prosecutor has submitted that the Investigating Officer [I.O.] of the case, after completion of investigation, has already submitted a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 55/2022 dated 29.10.2022 finding a *prima facie* case against the petitioner.

6. Ms. Ghosh, learned counsel appearing for the informant has submitted that the informant has already filed an affidavit in the instant bail application on 06.12.2022.

7. I have perused the statements and averments made in the affidavit. In the said affidavit, the informant has averred that the FIR was lodged against the petitioner but the entire matter between the informant and the petitioner has been amicably settled fully and finally on 29.05.2020. The informant has admitted about submission of the affidavit before the Officer In-Charge, Kachudaram Police Station seeking dismissal of the FIR as well as swearing of the affidavit dated 08.06.2020.

8. There is no restriction in regard to exercise with regard to exercise of the power under Section 438, CrPC in an appropriate case by the Court of Sessions, High Court or the Supreme Court even when the cognizance is taken or charge sheet is filed. The object of [Section 438](#), CrPC is to prevent undue harassment of the accused persons by pre-trial arrest and detention. It is settled that the fact that a Court has either taken cognizance of the offences or the investigating agency has filed a charge sheet does not by itself prevent the Court from granting the benefit of pre-arrest bail in an appropriate case. But, while granting the benefit of pre-arrest bail, all the above relevant factors are to be taken into consideration.

9. The petitioner is a Gram Rozgar Sahayak [GRS]. The informant, represented by Ms. Ghosh, learned counsel, has canvassed before this Court that the FIR was a result of misunderstanding of facts and by swearing an affidavit dated 08.06.2020, the informant has already represented before the Officer In-Charge, Kachudaram Police Station that she does not want to proceed further with the case. The danger of the petitioner being a Gram Rozgar Sahayak, absconding or fleeing, if released on bail, appears to be remote and the reasonable apprehension of the witnesses including the informant, being tempered with is also remote. The petitioner is found to have appeared in the village meeting convened by the village elders, immediately after the alleged incident.

10. Having considered all the fact situation obtaining the case in hand including the relevant factors to be taking into consideration, this Court is of the considered view that the petitioner has made out a *prima facie* case for extending the benefit of pre-arrest bail under Section 438, CrPC. It is accordingly provided that in the event of arrest of the petitioner viz. K. Moni Mohan Singha @ Moni Mohan Singha has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with G.R. Case no. 2188/2020, arising out of Kachudaram Police Station Case no. 53/2020, he shall be released on bail on furnishing a bail bond of Rs. 50,000/- with one local surety of the like amount, to the satisfaction of the arresting authority.

11. As it is submitted that the petitioner has not yet been declared as a proclaimed offender by the Court of law after submission of the charge sheet and G.R. Case no. 2188/2020, arising out of Kachudaram Police Station Case no. 53/2020, is pending for trial and / or commitment before the Court of learned Chief Judicial Magistrate, Cachar as on date, the petitioner shall appear before the said Court within a period of one month from today, without fail. Upon his appearance, the petitioner is at liberty to prefer an application for regular bail and in the event such an application is filed by the petitioner, the learned Chief Judicial Magistrate, Cachar shall consider the same in accordance with law, more particularly, by taking into consideration the provisions contained in Section 209[b], CrPC r/w Section 437, CrPC. The learned Court while allowing the prayer for bail, is at liberty to set forth such

conditions so as to secure the appearance of the petitioner in the ensuing trial.

JUDGE

Comparing Assistant