

GAHC010241292023



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

Case No. : AB/3644/2023

AJIRUL SHEIKH @ AZIRUL HOQUE
S/O- AMJAT ALI VILL- LALKURA, PT- II P.S- GAURIPUR DIST- DHUBRI,
ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P. ASSAM.

Advocate for the Petitioner : MR. M MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.11.2023

Heard Mr. M. Mondal, learned counsel for the petitioner. Also heard Ms. S.H. Bora, learned Additional Public Prosecutor, Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Ajirul Sheikh @ Azirul Hoque, who

is apprehending his arrest in connection with Gauripur PS Case No. 331/2023 under Section 498A/376/342/34 of the Indian Penal Code.

The gist of accusation in this case is that the first informant/victim has lodged an FIR on 22.08.2023 before the In-Charge of Daobhangi Police Out Post under Gauripur Police Station, *inter-alia*, alleging that the petitioner was married to the accused No. 2, named in the FIR, that is Ezarul Hoque and after the marriage, the accused persons named in the FIR, namely brother-in-law of the first informant as well as father-in-law as well as mother-in-law of the informant used to subject the first informant to cruelty.

It is further alleged in the FIR that on 20.08.2023 at about 10:00 PM when the victim was alone in her room, the accused persons, namely, the brother-in-law of the first informant forcibly raped her and later on, when the matter was reported to them, the father-in-law as well as mother-in-law of the informant, they locked the first informant inside the room. However, somehow the first informant manage to escape therefrom and took shelter in her parents house.

Learned counsel for the petitioner has submitted that the allegation levelled against the present petitioner in the FIR is not true and there is a family dispute between the first informant and the present petitioner due to which he has been falsely implicated in this case.

It is further submitted by the learned counsel for the petitioner that on 28.08.2023, the first informant has also sworn an affidavit before the Notary, Dhubri at Dhubri, wherein, it has been stated that the first informant has amicably settle the matter outside the Court and to do want to further pursue the matter.

On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of anticipatoy bail to the present petitioner. She has also

produced the case diary of Gauripur PS Case No. 331/2023 and has stated that there are materials in the case diary to show that the allegation levelled against the present petitioner is true. She has also pointed out towards the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973, wherein, she has stated in detail how the alleged offence was committed on her and she has implicated the present petitioner in the alleged offence.

I have considered the submissions made by learned counsel for both the parties and have perused the materials available on record. Though the petitioner's side has produced a photocopy of affidavit-cum-declaration from where it appears that the informant has sworn an affidavit, whereby it appears that the matter has been settled amicably between the parties, however the offence involved in this case is a heinous offence which is non-compoundable in nature and considering the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973, wherein, the victim has stated in detail as to how the offence was committed on her, this Court is not inclined to grant the benefit of an order passed under Section 438 of the Code of Criminal Procedure, 1973 at this stage.

Hence, the prayer for anticipatory bail application is hereby rejected at this stage.

Send back the case diary.

JUDGE

Comparing Assistant