

GAHC010241602022



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

Case No. : AB/3502/2022

ESTAQUE ALI AHMED
S/O ABDUL HAMID MONDAL,
A RESIDENT OF NIZARA PATH,
P.O. AND P.S.- HATIGAON,
DIST.- KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED P.P., ASSAM.

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

20.01.2023

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the

petitioner viz. Estaque Ali Ahmed has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Hatigaon Police Station Case no. 525/2022, registered under Sections 326/307, Indian Penal Code [IPC].

3. In the First Information Report [FIR] lodged on 19.11.2022, the informant has referred to an incident allegedly occurred on 14.11.2022 wherein the petitioner had allegedly assaulted the informant by a hammer. The informant has further mentioned that the petitioner got enraged and made the assault as he was caught red handed in connection with an extra-marital affair he was maintaining with another lady.

4. Mr. Bhuyan, learned counsel for the petitioner has submitted that the informant is ex-wife of the petitioner as both of them had executed a divorce certificate on 28.03.2022. There was some on-going disputes between the informant and the petitioner and it is in order to harass the petitioner, the informant has lodged the FIR on 19.11.2022 with a concocted story after 5 [five] days of the alleged incident [14.11.2022].

5. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, has submitted that as per the injury report of the injured/informant, available in the case diary, the injuries sustained by the injured/informant in the alleged incident dated 14.11.2022 was simple in nature though there were multiple lacerations in her scalp.

6. The materials in the case diary go to indicate that on the date of the alleged incident [14.11.2022], the informant had gone to the house of the petitioner in order to discuss certain matter and the witnesses whose statements are found recorded under Section 161, CrPC in the case diary, have stated that after some time, the informant was found with the injury, indicated above, with the blood oozing out of her.

7. The petitioner was granted interim protection on 24.11.2022 with the further direction to him to appear before the Investigating Officer [I.O.] of the case within 10 [ten] days from 24.11.2022. The learned counsel for the petitioner has submitted that the petitioner has appeared before the I.O. of the case in deference to the order dated 24.11.2022. The learned Additional Public Prosecutor has also submitted that the petitioner has appeared before the

I.O. of the case and on his appearance, the I.O. of the case has recorded his statement under Section 161, CrPC, which is available in the case diary.

8. Having regard to the fact that the informant had sustained simple injuries in the alleged incident dated 14.11.2022 and the fact that the petitioner has already joined the investigation by appearing before the I.O. of the case, this Court is of the considered view that custodial interrogation of the petitioner is not necessary for the purpose of carrying out further investigation of the case and his release on pre-arrest 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, the interim protection granted to the petitioner by order dated 25.11.2022, is made absolute, subject to the following conditions :-

[i] the petitioner shall cooperate with the investigation and shall thereafter, make himself available as and when his presence is required by the I.O. in the investigation of the case;

[ii] the 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; and

[iii] the 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.

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

JUDGE

Comparing Assistant