

GAHC010243152023



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

Case No. : AB/3614/2023

UPENDRA BORO
S/O- BEPANAN BORO,
R/O- VILLAGE NIJ DAMUGAON,
P.S- PANBARI, DIST- CHIRANG, ASSAM, PIN-783391

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. SAILENDRA DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

06.11.2023

Heard Mr. S. Deka, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor, appearing for the State of Assam.

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

1973 has been filed by the petitioner, namely, Upendra Boro who is apprehending his arrest in connection with Bijni P.S. Case No. 119/2023 under Sections 120B/376/506 of the Indian Penal Code.

The gist of accusation against the present petitioner is that on 29.09.2023, the victim girl lodged an FIR before the Officer-In-Charge of Bijni Police Station, *inter-alia*, alleging that she was having love affair with the present petitioner since 2020. It is also stated in the FIR that the petitioner propose to marry the informant and the informant agreed to such proposal and on such promise of marriage the petitioner committed rape on the informant on various occasions at her residence.

It is also alleged in the FIR that on 08.05.2023, taking advantage of the absence of the members of the family of the informant, the petitioner again committed on the first informant on the false promise of marriage and when the informant asked the petitioner to marry her, he used to postpone the same by giving different excuses and now the petitioner has refused to marry the informant and has threatened to kill her.

It is also stated in the FIR that on 20.07.2023, the village people settle to matter between the parties. However, it could not be settled due to non-cooperation of the present petitioner.

Learned counsel for the petitioner has submitted that admittedly there was a love affair between the petitioner and the informant and if anything has happened between them, it was consensual in nature.

Learned counsel for the petitioner has also denied the allegation of threatening to kill the informant as levelled in the First Information Report.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Bijni P.S. Case No. 119/2023 and has submitted that there are

incriminating materials against the present petitioner.

Learned Additional Public Prosecutor has submitted that though there appears to be a love affair between the parties, but there are materials to show that there was sexual relationship between the petitioner and the first informant on several occasions was not consensual.

Learned Additional Public Prosecutor has also fairly submitted that the medical report of the victim girl has failed to conform the rape on the victim girl.

I have considered the submissions made by learned counsel for both the parties and have gone through the materials in the case diary including the statement of the victim girl recorded under 164 of the of the Code of Criminal Procedure, 1973 as well as her medical examination report.

It appears from the materials available on record that there was a love affair between the petitioner and the victim girl and it also apparently appears that though the last date of forcefull sexual intercourse alleged is 08.05.2023, however, the FIR has been lodged after delay of 4 months, i.e. on 29th September, 2023.

On perusal of the case diary, it appears that the statement of relevant witnesses have already been recorded by the Investigating Officer. Hence, if certain conditions are imposed on the petitioner, this Court is of considered opinion that custodial interrogation of the petitioner may not be necessary for fair completion of the investigation of this case under the facts and circumstances of this case.

In view of above, the petitioner namely, Upendra Boro is hereby directed to appear before the Investigating Officer of Bijni P.S. Case No. 119/2023 and co-operate in investigation, within a period of 10(ten)days from the date of this order. If he does so within the stipulated period of time, in the event of arrest in

connection with Bijni P.S. Case No. 119/2023, he shall be allowed to go on interim bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the condition that:-

- (i) the petitioner shall not directly or indirectly make any inducement threat or promise to the victim girl or to any persons who are acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the investigating officer or to Court;
- (ii) the petitioner shall co-operate with the Investigating Officer in the fair investigation of this case.

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

Send back the case diary.

JUDGE

Comparing Assistant