

GAHC010244702022



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

Case No. : Bail Appln./3268/2022

ANOWAR HUSSAIN
S/O LATE JONGSER ALI
VILL- KAYAKUCHI PAM
P.S. AND DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 04-01-2023

Heard Mr. R. Ali, learned counsel for the accused-petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Anowar Hussain has prayed for his release on bail in connection with Barpeta Police Station Case no. 1114/2022 [corresponding G.R. Case no. 2108/2022], registered under Sections 354A/354B/457/376, Indian Penal Code [IPC].

3. The accused-petitioner was arrested and thereafter, produced before the Court of

learned Chief Judicial Magistrate, Barpeta on 16.11.2022 and on being so produced, he was remanded to custody. Since 16.11.2022, the accused-petitioner is in custody.

4. In the First Information Report [FIR], the informant has *inter alia* alleged that at around 12-30 a.m. in the night intervening 18.10.2022 and 19.10.2022, the accused-petitioner by intruding into the house of the informant committed forceful sexual act on her and the said incident was witnessed by the informant's elder son after getting awake from sleep. In the FIR, the informant has also brought allegation against the accused-petitioner of harassing her sexually since a long period of time.

5. The accused-petitioner is the elder brother of the informant's husband, who expired about 16 months earlier.

6. Mr. Ali, learned counsel for the accused-petitioner has submitted that after the demise of the informant's husband, there are disputes between the petitioner's family and the informant. On an earlier occasion, the informant had lodged an FIR against the accused-petitioner and 3 [three] other persons and the said FIR was registered as Barpeta Police Station Case no. 586/2022 on 02.06. 2022. The instant FIR, according to him, is a continuation of the efforts on the part of the informant to cause harassment of the accused-petitioner with false allegations of committing forceful sexual act.

7. Mr. Goswami, learned Additional Public Prosecutor who has received the case diary, has submitted that the statements of a number of witnesses have been recorded under Section 161, CrPC. The witnesses, who have been examined, have not disclosed about the incident of alleged forceful rape on the informant.

8. The informant in her statement recorded under Section 164, CrPC has reiterated the version made in the FIR. The informant in the statement recorded under Section 164, CrPC has mentioned that all her 3 [three] children had witnessed the accused-petitioner running away from the scene. In the FIR, the informant has stated that only her elder son had witnessed the incident of rape. The FIR was lodged before the Superintendent of Police,

Barpeta. There is no explanation in the FIR as to why the FIR was not lodged before the Officer In-Charge, Barpeta Police Station. In the FIR, the informant has alleged about sexual harassment by the accused-petitioner since after few days of the death of her husband. But in the FIR, lodged in connection with Barpeta Police Station Case no. 586/2022, the informant was silent about the said aspect. It is reported that the medical examination of the informant could not been done as the informant appeared before the concerned Police Station/Out Post lately on 08.11.2022.

9. Considering the progress made in the investigation and the period of detention of the accused-petitioner for 50 days in custody since 16.11.2022, this Court is of the view that the further custodial detention of the accused-petitioner appears not necessary for the purpose of carrying out further investigation into the case and if he is released on bail, at this stage of investigation, such release is not likely 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.

10. Accordingly, it is directed that the accused-petitioner shall be released on bail on furnishing a bail bond of Rs. 50,000/- with two suitable sureties of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Barpeta, subject to the conditions that :-

- [i] the accused-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 accused-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;
- [iii] the accused-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;
- [iv] the accused-petitioner shall maintain law and order and he shall not commit an offence similar to the offence of which he is accused, or of the commission of which he is suspected; and

[v] the accused-petitioner shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge-sheeted in the case.

11. The application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant