

GAHC010246872022



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

Case No. : AB/3581/2022

CHINMOY CHAKRABORTY AND ANR
S/O SUBRATA CHAKRABORTY
R/O VILL- KADAMSALI
PALPARA, P.O. SIMLABARI, P.S. LAKHIPUR, DIST. GOALPARA, ASSAM

2: FOZLUL HOQUE ANSARY @ FOZILUL
S/O BASIRUL HOQUE ANSARY
R/O VILL- KADAMSALI
PALPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P HAZARIKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 10-01-2023

Heard Mr. P. Hazarika, learned counsel for the petitioners 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 petitioners viz. [1] Sri Chinmoy Chakraborty and [2] Fozlul Hoque Ansary @ Fozilul have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Lakhipur Police Station Case no. 389/2022, registered for the offences punishable under Sections 376/325/354/34, Indian Penal Code [IPC].

3. In the First Information Report [FIR], lodged on 16.10.2022, the informant has referred to an incident which allegedly occurred on 05.10.2022 by stating that the petitioner no. 1 took her out at around 07-00 p.m. on that day on the pretext that they would go to his house for the purpose of discussing the impending marriage between them. But at the house of the petitioner no. 1, the informant was assaulted on different parts of her body by the petitioner with bare hands and thereafter, he fled away from his house. Thereafter, the petitioner no. 2 had repeated the same acts of assault. The informant has further stated that she and the petitioner no. 1 had maintained a romantic relationship since about 5 years and during the course of such relationship, they also indulged into physical acts on a number of occasions.

4. Mr. Sarma, learned Additional Public Prosecutor who has received the case diary, has submitted that the statement of the informant has been recorded under Section 164, CrPC on 03.01.2023.

5. I have perused the materials in the case diary including the statement of the informant recorded under Section 164, CrPC. In her statement recorded under Section 164, CrPC, the informant has reiterated that the informant and the petitioner no. 1 had maintained a romantic relationship since about 5 years and during the course of such relationship, they had also indulged into physical acts on a number of occasions. As regards the incident dated 05.10.2022, the informant has mentioned that she was taken to the house of the petitioner no. 1 on that day and was thereafter, assaulted by the petitioner no. 1 with bare hands but the informant had refused to undergo medical examination when she was asked to do so to find out presence of any injury on her person. In so far as the materials regarding the petitioner no. 2 is concerned, it has emerged that the witnesses, who reside in the

neighbourhood of the house of the petitioner no. 1, have not attributed any role to the petitioner no. 2 with regard to the alleged assault on the informant.

6. The petitioners were provided interim protection by order dated 02.12.2022 with a further direction to them to appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from 02.12.2022. The learned counsel for the petitioners submitted that in deference to the order dated 02.12.2022, both the petitioners have appeared before the I.O. of the case. It appears from the materials in the case diary that both the petitioners have appeared before the I.O. of the case and on their appearance, their statements were recorded by the I.O. of the case and the same are available in the case diary.

7. Having regard to the above materials available in the case, collected during the course of investigation carried out and considering the fact that both the petitioners have joined the investigation by appearing before the I.O. of the case, this Court is of the considered view that custodial interrogation of the petitioners is not necessary for the purpose of carrying out further investigation of the case and their 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 they continue to extend their assistance and co-operation in the further investigation of the case.

8. Accordingly, the interim protection granted to the petitioners by order dated 02.12.2022, is made absolute, subject to the condition nos. [ii] and [iii], already indicated in the order dated 02.12.2022.

JUDGE

Comparing Assistant