

GAHC010246962022



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

Case No. : Bail Appln./3298/2022

ARUP KHARGHORIA
S/O LT. MANIRAM KHARGHARIA
PRESENTLY RESIDING AT BORPATHAR TOWN, P.S. BARPATHAR
DIST. GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R B PHOOKAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 09-01-2023

Heard Mr. R.B. Phukan, learned counsel for the accused and Mr. R.J. Barua, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Sri Arup Kharghoria, who has been

linguishing in jail hazot since 23.08.2022, in connection with the Sessions Case No. 181/2022, under sections 420/376/384/506 of the IPC, pending before the learned Addl. Sessions Judge [FTC], Sonitpur, Tezpur, arising out of Thelamora PS Case No. 59/2022, under sections 420/376/384/506 of the IPC, read with section 67 of the IT Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by the informant Smti X [name withheld] of village Erasuti Jungle, under Thelamora on 07.08.2022, to the effect that Sri Arup Kharghoria meet with her family members in the month of January, 2022 and developed relationship with the family and he used to visit her house and also used to took the informant for outing. On 5th of January, 2022 he has taken her to Greed Wood Hotel of Dekargaon and there he has committed rape upon her and also threatened her not to disclose the same to anybody else and to kill her husband and her 11 years old son. On 24th of June, 2022, the accused told her husband over telephone that he will kidnap the informant and also he had sent her naked photograph to her husband and other family members and also demanded a sum of Rs. 5,00,000/- from her.

4. Mr. Phukan, learned counsel for the accused submits that the accused was arrested on 07.08.2022, and since then he has been languishing in jail hazoot for last 133 days. Mr. Phukan further submits that there is delay in lodging the FIR and no explanation is forthcoming for the same, and that the case has been lodged by the informant to settle personal score as she and her husband took a sum of Rs. 2,20,000/- as a loan from the accused, with a promise to return the same within 6 months, and they have entering into an agreement on 24.10.2022, to that effect. But, they failed to return the amount in time and for which the accused had filed one CR Case No.

33/2022, on 05.08.2022, before the learned SDJM [M] Dhansiri. After filing of the said CR. Case by the accused, the informant has lodged this case on 07.08.2022. Mr. Phukan, referring to some of invoices, as Annexure 6 series, submits that the informant and the accused have regularly used to visit and stay in the Green Wood Hotel and the accused used to pay the bill and the informant was a consenting party and that the evidence of the informant and her husband has already been recorded as PW-1 and PW-2, respectively. Mr. Phukan also submits that the accused is ready to participate in the trial and that his further custodial detention is unwarranted here in this case, and therefore, it is contended to allow this petition.

5. On the other hand Mr. Barua, learned Addl. P.P. has opposed the petition on the ground that the accused has been charged under sections 376/384/506 of the IPC read with section 67 of the IT Act, and, out of 8 cited witnesses, 2 witnesses have been examined by the learned court below till date and the witnesses have implicated the accused with the offence alleged in the FIR, and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. It appears that the learned court below has framed charge against the accused under sections 376/384/506 of the IPC read with section 67 of the IT Act and out of 8 witnesses cited by the IO in the charge sheet, 2 witnesses have already been examined. Admittedly, the accused and the

informant as well as the victim are familiar to each other and the accused used to visit her house and also used to stay in her house and the loan agreement - **Annexure-7** enclosed at Page No. 48 with the petition, reveals that she took a sum of Rs. 2,20,000/- from the accused as loan with a promise to return the same within 6 months from the date of execution of the agreement, i.e. **24.10.2021**. Further, it appears from the **Annexure-8** the Complaint petition that on account of failing to return the sum by the informant and her husband, the accused lodged a complaint case No. 33/2022, under sections 420/406/323/109/294/506 IPC, against the informant and her husband on 05.08.2022, before the learned SDJM(M) Dhansiri. It also appears from the **Annexure-6** series that the accused and the victim more often used to visit Green Wood Hotel, Tezpur situated at Dekargaon and they also used to spent night in the said Hotel. All these documents submitted by the learned counsel for the accused with the petition supported the submissions, so advanced by the learned counsel for the accused.

8. But, it appears from the evidence so recorded by the learned court below that the victim has implicated the accused with the offence charge and in her FIR, and it appears that from the FIR that the accused threatened to kill her husband and her 11 years old son, if she disclose the matter to others. In her evidence before the learned court below she testified that the accused threatened to kill her husband and took her away. P.W.-2, the husband of the victim also testified that the accused threatened to kill him and his son and also demanded a sum of Rs. 5,00,000/- from him and he went to Bornihat, where he is working, with some other boys and tried to abduct him but they failed in that attempt.

9. In the case of **Sudha Singh Vs. State of Uttar Pradesh Anr.** [Criminal Appeal No. 448 of 2021 @ Special Leave Petition (Crl.) No. 3577 of 2020] Hon'ble Supreme Court held it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the ratio set by a catena of decisions of this Court. The factors laid down in the judgment were:-

- (i) Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of accusations;
- (iii) severity of the punishment in the event of a conviction;
- (iv) danger of the accused absconding or fleeing, if granted bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of repetition of the offence;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger of justice being thwarted by grant of bail.

It is further held that - there is no doubt that liberty is important, even that of a person charged with crime, but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail.

10. In the instant case, it appears from the record of learned court below that out of the 8 cited witnesses, 6 witnesses are yet to be examined and the possibility of influencing and intimidating them cannot be ruled out. There is also potential threat to the life and liberty of victims/witnesses, if such accused is released on bail, which is writ large from the materials on record.

11. In view of above, and also in view of the ratio laid down by Hon'ble Supreme Court in the case of **Sudha Singh** (supra), this court is of the view that this is not a fit case where the privilege of bail can be granted to the accused. Accordingly, the petition stands dismissed. However, the learned court below is directed to expedite the trial and complete the same, if possible within a period of 3 months from today, without being influence by any of the observations made herein above, as the same is made only for the purpose of disposing of this bail application. If necessary, the learned court below shall take recourse to section 309[1] of the Cr.P.C.

JUDGE

Comparing Assistant