

GAHC010248302023



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

Case No. : Bail Appln./3986/2023

RAKIBUL AHMED AND ANR.
S/O SOBUR UDDIN AHMED,
VILL.- TAPARTARY, P.S.- ABHAYAPURI, DIST.- BONGAIGAON, ASSAM.

2: GOLAM HUSSAIN @ GULAM HUSSAIN
S/O ABDUL KALAM

VILL.- LATIBARI
P.S.- ABHAYAPURI
DIST.- BONGAIGAON
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

14.11.2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel, assisted by Mr. M.I.

Hussain, learned counsel for the petitioners. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam.

This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Rakibul Ahmed and (2) Golam Hussain @ Gulam Hussain, who are detained behind the bars since 29.09.2023 (since last 48 days) in connection with Tarabari P.S. Case No. 76/2023 under Sections 365/368/376 of the Indian Penal Code.

The gist of accusation against the present petitioners is that on 18.09.2023, one Omar Khan lodged an FIR before the Superintendent of Police, Barpeta *inter-alia*, alleging that his younger sister (victim of this case) was missing from his residence since 05.09.2023, when she went to appear before an interview at Barpeta Road.

Later on, she informed her brother that is the first informant of the case that she was kidnapped by the accused No. 1, Rakibul Ahmed, who is the petitioner No. 1, in the instant case and she was forcefully administered some drugs and was repeatedly subjected to forceful sexual intercourse and thereafter, she was recovered on a road side from the villagers.

It is further alleged in the FIR that the informant had rushed to the concerned Police Station immediately after the incident. However, the police did not help him and even after lodging of the FIR and recovery of the victim girl, police did not record the statement of the victim girl initially. After receipt of the said FIR, the Superintendent of Police directed the Additional SP Crime to supervise the matter and issued further direction to the Officer-In-Charge of Tarabari Police Station to take appropriate action in the FIR.

Learned Senior Counsel for the petitioners have submitted that the victim girl is not a minor and she is of 25 years of age. It is also submitted by learned

Senior Counsel that the allegations made against the present petitioners in the FIR are false and it is further submitted by the learned Senior Counsel that the petitioner No. 1 has already been suspended by his Department and the show-cause notice has been issued to the present petitioner to which he has also replied, wherein, he had stated that the victim girl used to regularly contact the petitioner No. 1 over telephone and used to express her love and affection towards him and also requested him repeatedly to marry her.

Learned Senior Counsel has also submitted that considering the length of detention already undergone by the petitioners, the petitioners may be allowed to go on bail.

On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the petitioners and has produced the case diary of Tarabari P.S. Case No. 76/2023, which was called for in connection with this case.

It is also submitted by the learned Additional Public Prosecutor that there are sufficient incriminating materials that the petitioner No. 1 had subjected the victim girl to sexual intercourse and petitioner No. 2 helps the petitioner No. 1 in committing the alleged offence by procuring drugs which were administered to the victim girl.

Learned Additional Public Prosecutor has also submitted that considering the nature of allegations and nature of offence involved in this case, there is every likelihood that if the petitioners are released at this stage, they may try to influence/intimidate the victim girl as the investigation is not yet completed.

I have considered the submissions made by learned counsel for both the sides and perused the materials available on record, including the case diary of Tarabari P.S. Case No. 76/2023 as well as the statement of the victim girl recorded under Section 164 Cr.P.C. though both the petitioners have already

undergone 48 days of detention which otherwise, is a long period of detention, however, considering the fact that the petitioner No. 1 is a police personnel and is involved in a heinous offence of repeatedly subjecting the victim girl to forcefully sexual intercourse, and as the investigation has not yet completed, this Court is not inclined to grant the bail to the petitioners at this stage.

The prayer for bail for the petitioners is, therefore, rejected.

Send back the case diary.

JUDGE

Comparing Assistant