

GAHC010251262022



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

Case No. : AB/3643/2022

FORIDUL ISLAM
S/O- AZAHAR ALI,
VILL- BAMUNPARA (MOISALDANGA),
P.O- RADHAMADHAB HAT,
P.S- MANKACHAR,
DIST- SOUTH SALMARA MANKCHAR, ASSAM, PIN-783131

VERSUS

THE STATE OF ASSAM .
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 05-01-2023

Heard Mr. M.R. Khandakar, learned counsel for the petitioner and Mr. B. Sharma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure,

1973 [CrPC], the petitioner viz. Foridul Islam has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Mankachar Police Station Case no. 303/2022, registered for offences punishable under Sections 457/376/34, Indian Penal Code [IPC].

3. In the First Information Report [FIR] registered on 06.10.2022, the informant has arraigned 2 [two] persons as accused – [i] Zomir Ali [A-1] and [ii] Foridul Islam [A-2] i.e. the present petitioner. The petitioner has *inter alia* alleged that Zomir Ali [A-1], during the previous 3 [three] months, committed forceful sexual act with her against her will with the inducement to marry her. On 11.08.2022, she was taken by Zomir Ali [A-1] to a house near his own residence with the promise to marry the informant. After keeping the informant in that house, he went out of the house. At that time, the petitioner [A-2] had made an attempt to rape the informant. As the informant raised hue and cry and people from the nearby areas gathered at the place of occurrence, the petitioner had allegedly fled away from the place. The informant has made further allegation to the effect that on 20.08.2022, Zomir Ali [A-1] had intruded into her house by taking advantage of absence of other persons in the house and raped her against her will.

4. Learned Additional Public Prosecutor has produced the case diary. The statement of the informant has been recorded under Section 164, CrPC on 20.10.2022. In her said statement, the informant reiterated the allegations against Zomir Ali [A-1]. She had further stated that the petitioner had also made an attempt to establish physical relationship with her but she resisted such attempt.

5. The informant in the FIR has, thus, made reference of three incidents - two incidents of 11.08.2022 and one incident of 20.08.2022. From the case

record and the case diary, it is noticed that the FIR was received only on 06.10.2022. The informant had mentioned that though she tried to take the complaint to the public but nothing was done by the villagers to discuss the complaint in the form of a public meeting and delay was caused for the said reason.

6. The statements of the witnesses recorded under Section 161, CrPC, available in the case diary, do not specifically indicate about commission of any sexual act by the petitioner. The informant is a married lady and as per her statement recorded under Section 164, CrPC, she had gone out with Zomir Ali [A-1] on her own on 20.08.2022. The medical examination report of the informant, after examining her at the Civil Hospital, Dhubri, was not consistent with recent sexual assault/intercourse.

7. Having regard to the aforesaid facts and circumstances obtaining in the case, I am of the considered view that that the petitioner has made out a case for extending the benefit of pre-arrest bail under Section 438, CrPC. I am of the considered view that custodial interrogation of the petitioner for the purpose of carrying out further investigation of the case is not necessary and his release on pre-arrest bail, at this stage of investigation, is not unlikely to bring any adverse effect in the further investigation of the case, provided the petitioner extends his assistance and co-operation in the further investigation of the case.

8. Accordingly, it is provided that in the event of arrest of the petitioner in connection with Mankachar Police Station Case no. 303/2022, he shall be released on bail on furnishing a bail bond of Rs. 25,000/- with one local surety of the like amount to the satisfaction of the arresting authority, subject to the conditions that :

[i] the petitioner shall appear before the Investigating Officer [I.O.] of the case within 7 [seven] days from today and shall co-operate with the investigation and shall thereafter, make himself available for interrogation whenever required by the I.O. of the case;

[ii] the 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; and

[iii] the 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.

The bail petition stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant