

GAHC010256752022



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

Case No. : AB/3700/2022

JOHOR ALI SHEIKH
S/O LATE ABDUL HUSSAIN
R/O VILL- BATABARI, P.S. BIJNI
DIST. CHIRANG, BTR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 03-01-2023

Heard Mr. M. Khan, learned counsel for the petitioner and Mr. M.P. Goswami, 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. Johor Ali Sheikh has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Bijni Police Station Case no. 200/2022, registered for offence punishable under Section 376, Indian Penal Code [IPC].

3. In the First Information Report [FIR] lodged on 28.11.2022, the informant has brought allegation against the petitioner of committing rape on her inside one shop premises on one occasion by showing dagger at her. The informant has also brought allegation to the effect that at around 04-00 a.m. on 28.11.2022, the petitioner had again made an attempt to commit rape on her but when he was seen by other persons, the petitioner had to flee away from the scene.

4. Mr. Khan, learned counsel for the petitioner has submitted that the informant is a married lady. The husband and the brother-in-law of the informant deals in woods. On one occasion just prior to the alleged incidents, they stored some woods in front of the house of the petitioner but those woods were seized by the police with the assistance of CRPF personnel on receipt of secret information from some source. As the woods were taken into custody by the police personnel, the brother-in-law of the informant suspected that the police might be tipped-off by an information by the petitioner and because of such suspicion, the instant FIR has been filed.

5. Mr. Goswami, learned Additional Public Prosecutor has submitted that the informant in her statement recorded under Section 164, CrPC has reiterated the version made in the FIR. In her statement, the informant has stated that on the earlier occasion when the forceful sexual assault was committed upon her by the petitioner, the informant did not have any evidence to prove the same. But on disclosure being made by her to her husband and other persons including

the Gaon Bura of the concerned village, all of them had acted together to catch the petitioner red handed in the event there was any subsequent attempt from his end. On the date of the alleged incident i.e. 28.11.2022, the petitioner had made another attempt to commit forceful sexual assault upon the informant and at that point of time, the husband of the informant and other persons including the concerned Gaon Bura, came to know of the alleged attempt of forceful sexual assault by the petitioner on the informant.

6. Having regard to the above materials collected during the course of investigation carried out so far, which *prima facie* go to indicate about the repeated acts of wrong doing of committing sexual assault on the part of the petitioner, I am of the considered view that this is not a fit case to extend the benefit of pre-arrest bail to the petitioner. Accordingly, the prayer of pre-arrest bail under Section 438, CrPC is rejected.

JUDGE

Comparing Assistant