

GAHC010271392023



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

Case No. : AB/4087/2023

HABIBAR RAHMAN KHAN
S/O WAJED KHAN
R/O VILL- FULKIPARA
P.S. HOWLY
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05.12.2023

Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

This is an application filed under **Section 438 Cr.P.C.**, praying for

pre-arrest bail by the petitioner, namely, **Habibar Rahman Khan**, in connection with **PRC Case No. 596/2022(arising out of Howly P.S. Case No. 10/2022)** registered under Section 366/376 IPC, pending before the court of learned CJM, Barpeta.

The case of the petitioner is that on 07.01.2022 at about 7 p.m., the petitioner with the help of other persons forcibly picked up the informant from the front of her house and developed physical relationship with her against her will. Subsequently, an F.I.R. was lodged and registered as Howly P.S. Case No. 10/2022, registered under Section 366/376/34 IPC.

It is submitted by learned counsel for the petitioner that the victim is a married woman and she alleged that she was forcefully brought to the house of the petitioner which is palpably false. The medical report also shows that there is no sign of sexual intercourse. It is also submitted by the learned counsel for the petitioner that the petitioner has been falsely implicated in this case.

It is also the submission of learned counsel for the petitioner that during investigation, the investigating officer has submitted charge sheet in this case under section 366/376 IPC against the petitioner showing him as absconder. The learned CJM, Barpeta vide order dated 05.11.2022 was pleased to take the cognizance under Section 376/366 of IPC and issued summons and subsequently by order dated 28.11.2023 was pleased to issue NBWA against the petitioner. It is further submitted that now the petitioner is ready to appear before the learned court and will abide by all the conditions imposed by the learned trial court.

In response, Mr. Baruah, learned Additional Public Prosecutor has

opposed in granting bail to the petitioner by stating that the petitioner was shown as absconder in the charge sheet. Though, the petitioner received summons from the learned trial court but he did not appear for which BWA was issued against him which was returned after execution. Then NBWA was issued against the petitioner. Hence, the petitioner has knowledge about the status of the case. Considering such fact, prayer of the petitioner may not be considered at this stage.

I have considered the submissions of learned counsel for the parties. I have also perused the relevant documents available in the record. It is a settled position of law that the police has no authority to declare a person as absconder. The court has such power to declare one person absconder after proper execution of warrant of arrest and proclamation of attachment. From the charge sheet, it is reflected that as the petitioner was not found in his house during investigation and it is difficult to trace him out in near future, he was shown as absconder in charge sheet.

In view of the above and considering the submissions of learned counsel for the parties, this court is of the view that custodial interrogation of the petitioner is not required in the present case.

Accordingly, the petitioner is directed to appear before the learned CJM, Barpeta within a period of 10(ten) days from today and file a bail application and on such appearance and filing of bail application, the learned Magistrate shall grant bail to the petitioner on furnishing a bond of Rs.50,000/-, with one suitable surety of the like amount to the satisfaction of the concerned court. Till such appearance before the learned CJM, Barpeta, the NBWA shall be kept in abeyance.

The observation made above, shall confine for the purpose of disposal of this petition only and shall not in any way affect the proceeding of the learned trial court.

In view of above, the anticipatory bail application stands disposed of accordingly.

JUDGE

Comparing Assistant