

GAHC010241382023



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

Case No. : AB/3604/2023

BIPLAB CHUTIA
S/O KIRAN CHUTIA R/O VILL. BAMGAON P.O. BAMGAON PS. SILAPATHAR
DIST. DHEMAJI ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:LIYO DOKE
D/O LIPE DOKE VILL PUSHI P.O BAGRA P.S AALO DIST. WEST SIANG
ARUNCHARL PRADESH PIN 79100

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(Crl.)/1187/2023

PURABI DIHINGIA AND ANR
W/O SRI BHADRESWAR DIHINGIA
R/O VILL. BAKOL GAON
P.O. AND PS. DHEMAJI
DIST. DHEMAJI
ASSAM.

2: MISS RASHMI CHUTIA

D/O SRI BIPLAB CHUTIA
R/O VILL. BAMGAON
P.O. BAMGAON
PS. SILAPATHAR
DIST. DHEMAJI

ASSAM
VERSUS

THE STATE OF ASSAM AND 2 ORS
RPE. BY THE PP
ASSAM

2:SRI BIPLAB CHUTIA
S/O KIRAN CHUTIA R/O VILL. BAMGAON P.O. BAMGAON PS. SILAPATHAR
DIST. DHEMAJI ASSAM
3:LIYO DOKE

D/O SRI LIPE DOKE
R/O VILL PUSHI
P.O BAGRA
P.S AALO
DIST. WEST SIANG
ARUNCHAR
L PRADESH
PIN 791001.

Advocate for : MR. N N B CHOUDHURY

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

12.12.2023

Heard Mr D Das, learned Senior Counsel for the petitioner, Biplab Chutia. Also heard Mr B Sarma, learned Additional Public Prosecutor for the State of Assam, Mr D Talukdar, learned counsel for the respondent No. 2 and Mr N N B Choudhury, learned counsel for the applicant Nos. 1) Smt Purabi Dihingia and 2) Miss Rashmi Chutia, in Interlocutory Application (Criminal) No. 1187/2023.

2. The petitioner, Biplab Chutia, has filed the anticipatory bail application, i.e., AB No. 3604/2023, under Section 438 CrPC, with prayer for pre-arrest bail, as he is apprehending arrest in connection with Silapathar PS Case No. 207/2023, under Section

376(2)(f)/354 B, read with Section 8/4 of the POCSO Act.

3. The learned Senior Counsel for the petitioner has submitted that a false case has been initiated against the petitioner with the allegation that on 12.09.2023, the petitioner committed rape on the minor victim, who is only 17 years of age, in the absence of the informant. The petitioner is father and informant is the mother of the victim. The petitioner also, brandishing his licenced pistol threatened to kill the informant and his victim daughter, if they divulged about the incident. As the informant was terrified she had to lodge the FIR with the Police at Dispur Police Station.

4. It is submitted that the FIR was lodged on 16.09.2023, but prior to lodgment of FIR, there were certain incidents, which prompted the victim to come up with such heinous allegations against her own father.

5. The Annexure-C of the petition shows that the victim was expelled from the hostel due to her unruly behaviour. Annexure-D reveals that the informant had lodged a false FIR against the petitioner because prior to lodgement of the FIR on 16.09.2023, the petitioner had lodged FIR against his wife on 15.09.2023, that his wife was missing from his house. The accused in this case (FIR dated 15.09.2023) was Sri Mintu Gogoi who had induced the petitioner's wife to maintain a relationship outside marriage with him.

6. The petitioner has admitted that he was enraged by his daughter on the night of the incident as she was chatting with a boy and he saw the messages between his daughter and the boy on the Instagram and then he assaulted her. On 12.09.2023, the victim was with the petitioner as after finishing her examination, she returned home and she was staying with the petitioner. The informant was not present in her house on the night of the incident.

7. The petitioner has denied that he had committed rape on his own victim daughter.

8. Notices were issued to the informant, who is arrayed as respondent No. 2 in this

case. The informant/respondent No. 2, herein has filed an affidavit stating that as her daughter has falsely alleged that the petitioner had committed rape on her. She (respondent No. 2) had lodged the FIR against her husband. Now, she is willing to get her statement re-recorded so that her husband may be exonerated from the false charges of rape.

9. The petitioner's sister is the applicant No. 1, who has filed the interlocutory application, registered as IA (Crl.) No. 1187/2023, has stated that the victim girl had falsely implicated her father with the offence of sexual assault. They approached the Police at Dhemaji Police Station for withdrawal of the FIR, but as this case is registered under the POCSO Act, the withdrawal of the FIR was not allowed.

10. The Annexure-A of the interlocutory application, captioned above is the application filed by the respondent No. 2, for re-recording her statement, stating that her daughter had brought false allegations against her husband. The Annexure-B of the interlocutory application captioned above is the application by the informant/respondent No. 2, to withdraw the allegations against her husband, i.e., the present petitioner.

11. The learned Senior Counsel for the petitioner has also drawn the attention of this Court to the medical report dated 14.09.2023, which clearly reveals that the victim underwent treatment at Srimanta Sankardev Hospital and Research Institute, which does not disclose any injuries sustained by the victim. The medical report is marked as Annexure-A.

12. It is also submitted that the FIR was filed in a place, which does not have any jurisdiction to investigate into an offence which was committed in the Dhemaji district. Vide order dated 27.09.2023, in connection with Dispur PS Case No. 1812/2023, the learned Special Judge (POCSO) Kamrup (Metro) was pleased to transfer the case to Dhemaji, as the place of occurrence was Silapathar under Dhemaji district

13. It is also submitted that as both the parties are willing to settle their differences, the

incarceration of the petitioner may create complications and may act as a hurdle in an understanding between the family members. The prayer for bail may be allowed so that the differences may be settled and the family may re-unite and stay peacefully together.

14. The learned Additional Public Prosecutor, Mr B Sarma, has raised objection stating that the Annexure-F is a medical report, which is not related to the medical examination of a victim of sexual assault. The statement of the victim under Section 164 CrPC clearly incriminates the present petitioner. There are incriminating materials against the petitioner in the Case Diary.

15. The learned Additional Public Prosecutor has drawn the attention of this Court to the medical report of the Department of Forensic Medicine, Gauhati Medical College and Hospital (GMCH) and ex-officio, Police Surgeon, Kamrup (Metro), Guwahati. It is submitted that the victim has sustained injuries of sexual assault. There were old as well as recent injuries substantiating the statement of the victim.

16. I have carefully perused the Case Diary.

17. The contents of the Case Diary are not brought to the fore. There are indeed incriminating materials against the petitioner in the Case Diary.

18. The argument of the learned Senior Counsel for the petitioner that the victim has sustained such injuries not because of the petitioner, but because of her unruly behaviour, cannot be considered at this juncture.

19. Without bringing the materials in the Case Diary to the fore, it is sufficient to hold that the allegations in the FIR itself depict that the petitioner is booked under a heinous offence and the import of the sections under which the petitioner is booked, does not entitle him to anticipatory bail, at this juncture.

20. The allegations in the FIR indicates that the investigation may be adversely affected if the petitioner is insulated by an order of anticipatory bail. The investigation is still under progress. At this juncture, there appears to be no justified ground to extend

the privilege of anticipatory bail to the petition. Hence, the bail petition is rejected after perusal of the Case Diary and the Medico-legal Report of the victim.

21. The anticipatory bail application as well as the interlocutory application stands disposed of.

22. Send back the Case Diary.

JUDGE

Comparing Assistant