

GAHC010026022024



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

**Case No. : AB/309/2024**

ZIABUR RAHAN @ JIYABUR RAHMAN  
S/O- LATE ALI HUSSAIN, VILL.- UPAR KAHUNDA, P.S. KAMPUR, DIST.  
NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.  
TO BE REPRESENTED BY THE P.P.,ASSAM

2:RABBUL HUSSAIN  
S/O- KASEM ALI  
VILL.- NO. 1 KACHUA  
PS. KACHUA  
DIST. NAGAON  
ASSA

**Advocate for the Petitioner : MS A BEGUM**  
**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**20.04.2024**

Heard Ms. A. Begum, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State appearing for respondent No.1 and Mr. S. Nawaz, learned counsel appearing for respondent No.2.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Ziabur Rahman @ Jiyabur Rahman**, in connection with **Kachua P.S. Case No. 142/2023**, registered under **Section 341/506 IPC, R/W Section 8 of POCSO Act, 2012 corresponding to GR Case No. 4009/2023.**

It is submitted by the learned counsel for the petitioner that there was a land dispute between the parties. He further submits that prior to the incident, quarrel took place between the informant and the petitioner over a piece of land and as a result of which, this false FIR has been lodged against the petitioner and prayed that pre-arrest bail may be granted to the petitioner.

On the other hand, Mr. R. J. Baruah, learned Additional Public Prosecutor has produced the case diary and submits that the petitioner had tried to commit sexual assault upon the victim. As such, at this stage prayer for bail may not be considered. Learned counsel for the respondent No.2 has also argued in the same tune.

I have considered the submissions made by the learned counsel for the parties. On perusal of the case diary it appears that the incident occurred on 23.10.2023 and the FIR was lodged on 08.11.2023 i.e. after 15 days of the incident. From the statement of the victim recorded under Section 161 Cr.P.C. it reveals that on the day of the alleged incident when the victim went to nearby agricultural land, the accused came from behind and forcefully took her to farm house where he attempted to commit sexual intercourse with her. But the victim in her statement recorded under Section 164 Cr.P.C. before the Magistrate did not allege such type of incident, rather stated that the accused petitioner had torn her wearing apparel and touched her breast.

Considering the facts as well as the materials available in the case diary, this Courts finds that custodial interrogation of the petitioner is not required for the purpose of investigation of the case. Therefore, he may be granted the privilege of pre-arrest bail.

Accordingly, it is provided that in the event of arrest, the petitioner, named above, shall be released on pre-arrest bail, in connection with the above noted case on furnishing bail bond of **Rs. 10,000/-** with **a suitable surety** of the like amount, to the satisfaction of the arresting authority.

The direction for pre-arrest bail is subject to the conditions that the petitioner:

(a) shall appear before the Investigating Police Officer within ten days from today and shall co-operate with the investigation;

(b) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

The anticipatory bail application stands disposed of.

Return the case diary.

**JUDGE**

**Comparing Assistant**