

GAHC010031282024



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

Case No. : AB/382/2024

MONOWAR HUSSAIN
S/O ABDUL JALIL
VILL- HATIMURA
P.S. LAKHIPUR
DIST. GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

05.03.2024

Heard Mr. N. Uddin, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned Addl. P.P, Assam.

This is an application under Section 438 of Cr.PC, 1973 for granting of pre-

arrest bail to the petitioner, namely Smt. Monowar Hussain, who is apprehending arrest in connection with Lakhipur P.S Case No. 313/2023 registered under Sections 366/376/354/323/34 of IPC.

The case of the prosecution is that the informant lodged an FIR on 28.08.2023 alleging that on 17.08.2023, while she was walking besides soil conservation office towards her home, the petitioner alongwith two persons mentioned in the FIR came in a maruti car and forcefully took her to the house of one of the co-accused. It is further alleged that the petitioner, who was in the house of the co-accused thereafter raped her forcefully against her will and her family members recovered her on the next day.

Mr. N. Uddin, learned counsel for the petitioner submits that the informant and the petitioner were in love relation and because the petitioner refused to marry the victim only on the ground that he is not of a marriageable age, the present FIR has been filed against the petitioner. He further submits that the victim girl has refused to be medically examined.

Mr. K.K. Parashar, learned Addl. P.P on the other hand strongly opposes the prayer of the anticipatory bail. He further submits that the victim statement has been recorded under Section 164 Cr.PC, which fully corroborates her version given in the FIR.

I have heard the submissions made at the bar and have perused the materials available on record.

It appears from the statements recorded under Section 161 Cr.PC as well as the statement of the victim recorded under Section 164 Cr.PC that there are

sufficient adverse materials against the petitioner. It further appears that the victim girl has corroborated her version made in the FIR through her statement under Section 164 Cr.PC.

It appears that the victim and the petitioner were admittedly in love relation. It further appears that the victim girl has alleged that around 12:00 in the afternoon, the two persons named in the FIR had forcefully taken her from the public road. However, there are no witnesses to the said effect.

Considering the fact that the victim girl refused to be medically examined and also there being no evidence to show that she was forcefully taken away by the two persons named in the FIR, this Court is inclined to grant the anticipatory bail to the petitioner.

As such, 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. 30,000/- with one surety of like amount to the satisfaction of the arresting authority, subject of course to the following conditions:-

- (i) That the petitioner shall appear before the Investigating Officer within 10 days, failing which on and from the 11th day, he shall be arrested.
- (ii) That the petitioner 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; and

- (iii) That the petitioner shall refrain from committing any similar offences in future of which she is accused or suspected of commission.

With the above observation and direction, the anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant