

GAHC010036152024



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

Case No. : AB/453/2024

PARWEZ ANSARI
S/O ASGAR ALI ANSARI
R/O MENDI PATHAR
P.S. KRISHNAI
DIST. GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

11.03.2024

1. Heard Mr. K. N Choudhury learned Senior Counsel assisted by Mr. S. Islam Learned Counsel appearing for the petitioner. Also heard Mr. K.K Parashar Learned Addl. Public Prosecutor for the State respondent.

2. This is an application under section 438 under the Cr.P.C, 1973 for granting pre arrest bail to be accused petitioner i.e. Parwez Ansari who is apprehending arrest in connection with All Women Police Station case no 02/2024 registered under section 376 IPC.

3. The case of the prosecution is that on 31.1.2024, one Priti Thapa lodged an FIR before the O/C, All Women Police Station alleging inter-alia that the informant was one of the petitioner's school mate and later on both were in a love relationship. It is further alleged that on 04.01.2022, the petitioner through their common friend brought her to Rajdhani Guest House, near Dispur Law College, where the petitioner forced her to drink alcohol and got into physical relation with her. It is further alleged that on 08.03.2022, the informant after undergoing ultra sound came to know that she was one and a half months pregnant. It is further alleged that she intimated the same to the family members of the petitioner and they promised that they would solemnised their marriage. However later on they blocked her phone number. It is further alleged that in the mean time the informant was 7 month pregnant and she could not go for abortion and on 02.11.2022 she gave birth to a child. After six months the informant give the child to Adoption Center.

4. After having receiving the same FIR under All Women Police Station Case No. 02 of 2024 was registered under section 376 IPC.

5. Mr. K N Choudhury Learned Senior Counsel submits that the petitioner took admission in Class XII at Sai Vikash Academy, Guwahati Club and passed H.S (Science) final examination in the year 2022. He further submits that the informant also studied in the same school with the petitioner and there was love relationship between them. He further submits that there was consensual sexual relationship between them.

6. He further submits that the petitioner was staying in Delhi last two years and was not aware about the pregnancy of the informant. He further submits that the parents of the petitioner after coming to know about the pregnancy of the informant took her to Delhi and admitted her at Karuna Hospital wherein she gave birth to a male child on 02.11.2022. The parents of the petitioner had spent more than lakh of rupees and the parents of both sides decided to solemnized the marriage between petitioner and the informant after completion of their studies. The father of the petitioner also paid money time to time to the informant as per her requirement. The screenshots of such money transfer are enclosed as Annexure 5 to the anticipatory bail petition.

7. He further submits that after six months of the delivery of the child the informant came to Guwahati and without informing the petitioner and his family members, she gave her child away for adoption and also blocked the contacts of the family member.

8. He further submits that informant thereafter fall in love with one Rohan Kalita and in the month of November they both conspired together and demanded money from the petitioner's parents in the name of higher studies. As such the petitioner's father paid huge amount of money to the informant. The screenshot of such transfer are enclosed to the anticipatory bail petition as Annexure 6.

9. He further submits that the informant did not take admission for higher studies and instead she demanded a further amount of Rs. 2,00,000/- from the father of the petitioner. He further submits that the petitioner's father upon realizing that the informant is trying to extort money, stopped paying further money.

10. He further submits that in such circumstances the informant has filed the

FIR stating some false and fabricated story only to harass the petitioner and the family members.

11. Mr. K.K Parashar learned addl. Public Prosecutor on the other hand strongly opposes the prayer for anticipatory bail.

12.He further submits that the informant in her statement recorded under Section 164 Cr.P.C has stated that the petitioner by making her drink alcohol committed forceful sexual intercourse with her and accordingly she conceived. She further stated that the petitioner told her that since she did not convert to Islam, he raped her and did not marry her.

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

14. It appears from the materials available on record, that the informant victim has clearly implicated the petitioner for the alleged offence. It further appears that the FIR has been lodged after almost two years from the date of the incident. It further appears the petitioner and the informant were in love relationship and the family of the petitioner also had taken care of the expenses incurred while delivering the child. It further appears that the family of the petitioner further paid for the informant's higher studies. Undoubtedly the gravity of the offence is grave but that alone cannot be a decisive ground to deny anticipatory bail. Rather competing factors are required to be balanced by the Court while exercising its discretion. The object of bail is neither punitive nor preventive; but is to secure the appearance of the accused persons at his trial by reasonable amount of bail. Reference is made to the decision of the Apex Court in the case of *Sanjay Chandra Vs Central Bureau of Investigation* reported in 2012 volume 1 SCC page 49 relevant paragraph of the aforesaid judgement is

extracted here under for ready reference:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the

accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson”

15. In the present case there appears no adverse report with regard to the antecedent of the petition. Further there is no apprehension expressed in the case diary to the effect that the petitioner shall flee away from justice. In fact Mr. K. N. Choudhury, learned Senior Counsel submits that the petitioner is ready and willing to co-operate with the ongoing investigation.

16. In view of the above this court is of the considered view, that custodial interrogation of the petitioner may not be required for the ongoing investigation.

17. Accordingly, it is provided that in the event of arrest, the petitioner name above, shall be released on 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 7 days, failing which on and from the 8th day, the interim- pre arrest bail order shall have no force;
- (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 he is accused or suspected of commission.

18. Accordingly, the Anticipatory Bail application stands disposed of.

JUDGE

Comparing Assistant