

GAHC010039152023



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

Case No. : I.A.(Crl.)/156/2023

REJAUL KARIM @ MECHER ALI @ SAMIR ALI
S/O FAZAR ALI @ MD FAZAL HOQUE
RESIDENT OF GULANDIHABI, PO SAMTILA, PS DHULA, DIST DARRANG,
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MALENSA KHATOON
W/O MD. ZAKIR HUSSAIN
VILL-BHULINIDUBA
P.S.-UDALGURI
DIST-UDALGURI
ASSA

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./352/2022

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S/O FAZAR ALI
RESIDENT OF GULANDIHABI
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2:MALENSA KHATOON
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RESIDENT OF VILLAGE BHULINIDUBA
PS AND DIST UDALGURI
ASSAM

Advocate for : MR. A T SARKAR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 01.05.2024

Heard Mr. A.T. Sarkar, learned counsel for the applicant. Mr. D.P. Goswami, learned Public Prosecutor for the State/respondent No.1.

2. This is an application under Section 389 Cr.P.C. praying for granting bail by suspending sentence pending appeal to the applicant in connection with the judgment dated 23.11.2022 passed by the learned Assistant Sessions Judge, Udalguri, Assam, in connection with Sessions (II) Case No. 50/2022, whereby convicting the accused/applicant under Section 366 IPC and sentenced him to undergo rigorous imprisonment for 10(ten) years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for another 1(one) year.

3. The learned counsel for the applicant submits that the learned trial court has wrongly interpreted the provision of Section 366 IPC. It is also

submitted that from the statement of the victim recorded under Section 164 Cr.P.C. as well as the evidence of the victim, it is reflected that she has been taken by the petitioner but the second part of the section i.e. physical relationship under compulsion with petitioner or any other person is missing.

In support of his submission, the learned counsel for the petitioner has placed reliance on a case law-

(i) Gabbu vs. State of M.P., reported in (2006) 5 SCC 740.

4. The learned counsel for the petitioner further submitted that abduction of woman is not enough to prove the offence under Section 366 IPC. It must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.

5. It is also submitted that there are lots of contradictions in the evidence of the witnesses and there is every possibility of acquittal of the applicant in the case. Considering these aspects, the applicant be released on bail during pendency of the appeal.

6. On the other hand, Mr. Goswami, learned Additional Public prosecutor submits that there is sufficient incriminating materials available against the petitioner in this case. It is also submitted that there is allegation against the

petitioner that he had abducted the victim for which he has been convicted under Section 366 IPC.

7. I have considered the submissions made by the learned counsel for the parties as well as perused the judgment of the learned trial court.

8. Considering the submission of learned counsel for the parties, without going into the merit of the case, prayer of the applicant is allowed.

9. Accordingly, the appellant-applicant, named above, shall be released on bail suspending the sentence during appeal in connection with Sessions (II) Case No. 50/2022, under Section 366 IPC, subject to the following conditions :

(i) The applicant shall furnish a bail bond of Rs.50,000/- with two suitable sureties each of the like amount to the satisfaction of the learned Assistant Sessions Judge, Udalguri, Assam.

(ii) The learned Assistant Sessions Judge, Udalguri, Assam will be at liberty to impose any condition(s) while releasing the applicant on bail.

10. Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.

11. In view of the above, interlocutory application stands disposed of.

JUDGE

Comparing Assistant