

GAHC010042322024



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

Case No. : Bail Appln./594/2024

ABDUR RAHMAN @ RINKU
S/O ABDUS SUKUR
VILL- RAKYASIAI PART-II
P.S. MORNOI
DIST. GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

08.04.2024

1. Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor appearing for the State of Assam.

- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Abdur Rahman @ Rinku, who has been detained behind the bars since 03.04.2023 in connection with Session Case No. 188/2023, under Section 341/376(D) of the Indian Penal Code.
- 3.** The gist of accusation in this case is that on the basis of an FIR lodged by the mother of the victim, *inter alia* , alleging that her daughter was ganged raped, Mornoi P.S. Case No.57/2017 was registered under Section 341/376(D) of the Indian Penal Code and the investigation was initiated.
- 4.** Ultimately, on completion of the investigation charge sheet was laid against five accused persons, including the present petitioner.
- 5.** The present petitioner was shown as an absconder in the charge sheet. However, later on the strength of non-bailable warrant of arrest issued by the court, the petitioner was arrested on 03.04.2022 and since then, he has been detained behind the bars.
- 6.** Learned counsel for the petitioner has submitted that the charge sheet has been laid against five accused persons, and four accused persons are already on bail. He has also submitted that the allegations, against the other accused persons, who are already on bail, are also similar to that of the present petitioner.
- 7.** It is also submitted by the learned counsel for the petitioner that on similar occasions, the petitioner had approached this court, and by order dated 24.11.2023 passed in Bail Application No. 3510/2023, the prayer for bail was rejected. However, an observation was made that after examination of the victim girl, the petitioner may approach the trial court and may pray for regular bail, which would be considered by the trial court on its own merit.
- 8.** Learned counsel for the petitioner has submitted that the victim girl

has already been examined as PW-4, and the petitioner had approach the trial court, i.e. the court of learned Additional Sessions Judge, Goalpara. However, by order dated 23.02.2024, the prayer for bail of the petitioner was rejected.

9. The petitioner has submitted that as the co-accused persons against whom the similar charges are levelled are already on bail, there is no justification for detaining the present petitioner behind the bars, if he is willing to co-operate in the trial.

10. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the offence alleged in this case is of a heinous offence of gang rape and the present petitioner was evading the court of justice as he did not co-operated in the investigation and it took about 1 ½ years to apprehend him in execution of the warrant of arrest issued against him.

11. It is also submitted by the learned Additional Public Prosecutor that the present petitioner is also facing trial in Session Case No. 235/2023, wherein, it is alleged that the accused persons fired shots at police by using AK-47 assault-rifle and other firearms, so as to evade arrest.

12. Considering the past conduct of the petitioner, the trial court had rejected the bail of the present petitioner, by order dated 23.02.2024 passed in Sessions Case No. 188/2023.

13. I have considered the submissions made by the learned counsel for both the sides, and have perused the scanned copy of the case record of Sessions Case No. 188/2023, which was called for in this case.

14. I have also considered the testimony of the victim girl which she has deposed as PW-4 during the trial. The past conduct of the petitioner only shows that he was evading arrest in this case and did not co-operated in the

investigation and he was produced by executing non-bailable warrant of arrest against him.

15. It also appears that the present petitioner has also been facing trial in another case relating to dacoity, wherein, also the allegations were very grave against the present petitioner. Moreover, the nature of offence and the testimony of PW-4, (victim) implicating the present petitioner, and the rape of the present petitioner in committing the alleged offence is very heinous in nature.

16. This court is not inclined to grant bail as it fully concurs with the observation of the learned Additional Sessions Judge, Goalpara made in order dated 23.02.2024, passed in Sessions Case No. 188/2023, while rejecting the prayer for bail of the present petitioner.

17. In view of above, the prayer for bail is rejected at this stage.

18. With the above observation, this bail application is hereby dismissed.

JUDGE

Comparing Assistant