

GAHC010051902024



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

Case No. : AB/651/2024

AFTAB ALI AHSAN @ ABTAB ALI AHSAN
S/O HAFIZ LALIPATHAR, PS DHING, DIST NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:REJUWANA SULTANA
D/O MOHAMMAD LIYAKAT ALI
R/O - VILL - BESAMARI
PO - DHING
PS - DHING
DIST - NAGAON
ASSAM
PIN - 78212

Advocate for the Petitioner : MR. MUSTAFA HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 04.04.2024

Heard Mr. S. Nawaz, learned counsel for the petitioner. Also heard Mr. M.A. Sheikh, learned counsel appearing on behalf of the informant and R.R. Kaushik, learned Additional

Public Prosecutor appearing for the State respondent.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioner, namely Aftab Ali Ahsan @ Abtab Ali Ahsan, who is apprehending arrest in connection with Dhing P.S. Case No.21/2024 under Sections 417/376/354B/328/34 IPC.

Case diary is received. Perused the same.

Mr. M.A. Sheikh, learned counsel appearing on behalf of the informant has filed written objection. It is submitted by the learned counsel for the petitioner that it is a fact that both the accused petitioner and the victim had love relationship and it continued for a considerable period of time but there is no physical relationship with each other. The family member of the accused/petitioner did not agree to marry with the victim. Both the victim as well as the accused petitioner are adult and there was no false promise of marriage made by the accused/petitioner in course of their relationship. When the informant's daughter expressed her desire to get married with the petitioner, the petitioner conveyed his family's intention to the informant and his daughter. On 17.01.2024, the daughter of the informant came to the house of the petitioner and demanded to marry her. On refusal to marry her, the petitioner's uncle handed over her to police personnel with the help of women cell. The present FIR has been lodged by the father of the victim only on refusal to marry his daughter by the family member of the accused petitioner. However, no case is established against the present petitioner under Section 417/376/354B/328/34 IPC and the accused petitioner nor his family member administered poison to the victim. The FIR has been lodged against the accused/petitioner only to harass the petitioner who is a government servant. However, he is ready and willing to cooperate with the investigation if he is granted with the privilege of pre-arrest bail.

In this context, Mr. M.A. Sheikh, learned counsel appearing on behalf of the victim has submitted that the respondent No.2/victim was raped by the accused/petitioner with the false promise of marriage. Their relationship may be consensual, but it is a case that he obtained her consent only with the pretext of marriage and thus the case against the petitioner under Section 420 is well established. More so, the other co-accused persons No.2, 3, 4 and 5 agreed before

the village defense party that the victim will be given marriage as per religious customs but the marriage was not performed and finding no other alternative, the victim went to the house of the petitioner when all family members of the petitioner assaulted her and also administered poison for which she had to be hospitalized. He submits that it is not at all a fit case to extend the privilege of pre-arrest bail to the accused petitioner.

In that context, learned counsel for the petitioner has submitted that all other co-accused persons are already granted bail by the trial Court below and they are cooperated with the investigation.

Learned Additional Public Prosecutor has submitted in this regard that from the materials available in the case diary, it is seen that there was a love relationship between the victim and the accused petitioner.

It is submitted by the learned Additional Public Prosecutor that prior to the said incident the victim also eloped with the accused/petitioner. However they were caught by the police and she was handed over to women cell. However, from the medical report of the victim it is seen that there is no sign of external injury sustained by the victim nor there is any report with regard to administering poison to her though she was found unconscious by her family member.

Considering the materials available in the case diary as well as the entire facts and circumstances of the case and considering the age of the victim , I find that custodial interrogation of the petitioner is not necessary for further investigation of the case.

Accordingly, it is provided that in the event of arrest of the accused/petitioner named above in connection with Dhing P.S. Case No.21/2024 under Sections 417/376/354B/328/34 IPC, he shall be enlarged on pre-arrest bail on his executing a bond of Rs.20,000/- only with one surety of the like amount to the satisfaction of the arresting authority subject to the following conditions:-

i.that the petitioner shall appear before the Investigating Officer of the case within a period of one week from today to enable recording of his statement;

ii. that the petitioner shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the

investigation of the aforesaid case; and

iii.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.

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

Return the case diary.

JUDGE

Comparing Assistant