

GAHC010060042024



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

Case No. : AB/781/2024

EMAN ALI AND ANR
S/O SUJAL UDDIN, R/O VILL- KATHALDI PART-II, P.O. AND P.S.-
BILASIPARA, DIST- DHUBRI, ASSAM, PIN NO. 783348

2: MD BADSHA @ BADSHA SHEIKH
S/O ENNAS ALI
R/O VILL- KATHALDI PART-II
P.O. AND P.S.-BILASIPARA
DIST- DHUBRI
ASSAM
PIN NO. 78334

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A CHOUDHURY
Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

10.04.2024

Heard the learned counsel Mr. S. Islam appearing for the petitioners. Also heard Mr. R.R. Kaushik, learned Addl. Public Prosecutor representing the State of Assam.

2. This is an application under Section 438 of the CrPC in respect of Dotma P.S. Case No.23/2023, registered under Sections 458/376/109/384/506/34 of the IPC.
3. It is alleged in the FIR that on the day of occurrence, the petitioners Eman Ali and Md. Badsha @ Badsha Sheikh entered into the house of the informant woman. Thereafter, Eman Ali had committed rape upon the woman while Md. Badsha @ Badsha Sheikh was guarding at the door. After the incident, a village meeting was held on the said issue.
4. The village leaders asked Eman Ali to pay a sum of ₹80,000/- as fine.
5. The petitioner Eman Ali paid the fine but the money was misappropriated by some other persons and the same was not given to the woman. It is further alleged that the woman was threatened by the leaders that if she had filed any criminal case over the incident, they will not allow her to live with her husband.
6. I have gone through the statement of the victim woman that was recorded under Section 164 of the CrPC.
7. Mr. Islam submits that if the money (₹80,000/-) was paid to the woman, she would not have filed this FIR against the petitioners. According to Mr. Islam, it goes to show that the victim was a consenting party to the acts of the petitioners.
8. After hearing the learned counsel of both sides, I have decided to agree with Mr. Islam. I have also decided to agree that the victim was a consenting party to the act of the petitioners. Therefore, the petitioners do not deserve to be detained in custody. Their application for bail is allowed.
9. The petitioners, namely- Eman Ali and Md. Badsha @ Badsha Sheikh are allowed to go on bail in connection with Dotma P.S. Case No.23/2023, registered under Sections 458/376/109/384/506/34 of the IPC on furnishing bail bond of ₹20,000/- with sureties of like amount to the satisfaction of the arresting authority.
10. The above named petitioners shall co-operate with the police investigating officer as and when required.

With the above direction, the application for bail is allowed.

JUDGE

Comparing Assistant