

GAHC010073272024



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

Case No. : Bail Appln./1022/2024

DEBOJIT SAIKIA
S/OLT. GUNIRAM SAIKIA
R/O HOUSE NO. 4, JONAK PATH,
BETKUCHI, P.S. GORCHUK
IN THE DISTRICT OF KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S A HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.04.2024

1. Heard Mr. S.A. Hussain, learned counsel for the petitioner and also

heard Mr. M.K. Goswami, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Debojit Saikia, who has been detained behind the bars since 01.04.2024 (for last 19 days), in connection with All Women P.S. Case No. 19/2024, registered under Section 354/354-A 1(i)(ii) of the Indian Penal Code.

3. The gist of accusation against the present petitioner is that on 01.04.2024, the victim women had lodged an FIR before the Officer-In-Charge of All Women Police Station, *inter alia*, alleging that on 31.03.2024, at about 1:00 PM, when she was alone in her house, her landlord (the present petitioner) entered into her room and grabbed her from behind by gagging the mouth and touched the chest of the informant.

4. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated by the victim.

5. It is submitted by the learned counsel for the petitioner that the victim and her husband are the tenants of the petitioner and they have outstanding dues against the rent, which are payable to the present petitioner. On 31.03.2024, when the petitioner went to the house of the tenant to ask for the rent, there was an altercation between them and he was threatened by the first informant and her husband and in that regard, he also had lodged an FIR on 31.03.2024 against the first informant and her husband. However, his FIR was not registered, though the husband of the first informant was called to the police station.

6. Learned counsel for the petitioner has also submitted that the petitioner was called to the police station by the Investigating Officer of All

Women P.S. Case No. 19/2024, on 01.04.2024 and when he went there, he was arrested without issuing any notice under Section 41A of the Code of Criminal Procedure, 1973.

7. Learned counsel for the petitioner has also submitted that on the next day, when the petitioner is produced before the learned Judicial Magistrate First Class, no reason has been shown in the forwarding report for dispensing with the notice Section 41A of the Code of Criminal Procedure, 1973.

8. It is further submitted by the learned counsel for the petitioner that the petitioner has already completed 19 days behind the bars and considering the period of detention also, he may be allowed to go on bail.

9. On the other hand, the learned Additional Public Prosecutor has produced the case diary of All Women P.S. Case No. 19/2024 and has submitted that the victim has in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 has implicated the present petitioner of attempting to molest her.

10. He has also submitted that other two witnesses whose statements were recorded under Section 161 of the Code of Criminal Procedure, 1973 have also stated that the victim told them about the incident, though they themselves have not seen it.

11. The learned Additional Public Prosecutor also submits that the petitioner being an employee of Assam Police is in a position to tamper and influence the witnesses. Therefore, he was arrested dispensing with the notice under Section 41A of the Code of Criminal Procedure, 1973 and explanation in that regard has been there in the forwarding report.

12. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record, including

the case diary of All Women P.S. Case No. 19/2024.

13. On perusal of the forwarding report by which the present petitioner was produced before the learned Judicial Magistrate, it appears that though general reasons are mentioned by the arresting authority for arresting the present petitioner, however, it has not been specifically mentioned as to why the notice under Section 41A of the Code of Criminal Procedure, 1973 has been dispensed with when the offence for which the petitioner has been charged with is not punishable for more than 7 years imprisonment. Moreover, it also appears from the case diary that the statement of the victim has already been recorded and the investigation has fairly progressed. Further, considering the period of detention already undergone by the petitioner, this court is of considered opinion that further custodial detention of the above named petitioner may not be necessary for fair completion of the investigation of All Women P.S. Case No. 19/2024, if he co-operates in the investigation.

14. In view of above, the above named petitioner is allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M) with conditions that:-

- i.** the petitioner shall appear before the Investigating Officer of All Women P.S. Case No. 19/2024 as and when so required for the sake of proper investigation of the case; and
- ii.** the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the trial court in the trial pending against the present petitioner.

15. With the above observations, this bail application is hereby disposed of.

16. Send back the case diary.

JUDGE

Comparing Assistant