

GAHC010093232024



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

Case No. : AB/1198/2024

JINIMA AKTARA @ MISS. JINIMA AKHTARA
D/O SHAMSUL HAQUE,
RESIDENT OF VILLAGE AND PO BAGODI, PS AND DIST BARPETA ASSAM

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

Advocate for the Petitioner : MR J HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.05.2024

Heard Mr. H. Maurya, learned counsel for the petitioners. Also heard Mr. M.P. Goswami learned Additional Public Prosecutor 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 Jinima Aktara @ Miss Jinima Akhtara have been apprehending arrest in connection Lahorighat P.S. Case No.213/2023 under Sections 306 IPC.

The Case Diary has been received. Perused the same.

It is submitted by the learned counsel for the petitioner that the petitioner is innocent and there is no materials to attract the case under Section 306 IPC. It is a fact that the accused petitioner and the victim got to know each other through social media and thereafter they developed love relationship. When the accused petitioner who is a law graduate came to know that the deceased is not pharmacist and no pharmacy licence available with him then she started avoiding him as she cannot spoil her life by marrying a person who is not having requisite qualification for a pharmacist.

In this regard, learned counsel for the petitioner also relied on a decision of ***Hon'ble Supreme Court reported in 2022 LiveLaw (SC) 834*** in the case of ***Mariano Anto Bruno & Anr –vs- The Inspector of Police*** and submits that the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, there cannot be any conviction under Section 306 IPC.

In this regard, he basically emphasized on paragraph 38 of the said judgment which is as follows:-

“This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable”

He further submits that the petitioner is from Barpeta and the deceased is from Morigaon and there cannot be any abetment on the part of the accused petitioner for committing the suicide by the deceased. However, he submits that the accused petitioner is ready and willing to cooperate the I/O in further investigation of the case if she is granted with the privilege of pre-arrest bail.

Learned Additional Public Prosecutor in this regard has submitted that there are sufficient incriminating materials against the petitioner in the case diary and apart from that there is a suicide note from the deceased which is recovered by the I/O from his possession, wherein he clearly stated that due to torture and harassment by the petitioner with whom he had love affair he had to take such steps by committing suicide. More so, he submits that the I/O has filed bail objection wherein it is stated that

there may be hampering and tampering of the investigation of the case if the accused petitioner is granted with the privilege of pre-arrest bail.

Accordingly, learned Additional Public Prosecutor has raised objection and submits that it is not a fit case to extend the privilege of pre-arrest bail to the petitioner.

Having heard the submissions made by the learned counsel for both sides as well as the materials available in the case diary, it is seen that incriminating materials are collected by the I/O during the investigation against the petitioner, more particularly from the suicide note of the deceased, it is seen that he took such steps only because of the mental torture and harassment from the accused petitioner and thus the allegation of mental harassment can be considered as a active act or direct act which led the deceased to commit suicide.

In view of the above, I find that custodial interrogation of the accused petitioner may be necessary for further investigation of the case to unearth some more facts and hence, this is not a fit case to extend the privilege of pre-arrest bail to the petitioner.

Anticipatory bail application stands rejected.

Send back the case diary.

JUDGE

Comparing Assistant