

GAHC010094832024



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

Case No. : AB/1226/2024

RATAN DAIMARY
S/OLT. BIRBAL DAIMARI,
R/O VILL- KURABAHI (GOIBARI),P.S. ORANG,
P.O. ORANG (JAMUGURI), DIST. UDALGURI
BTC, ASSAM, PIN-784114

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:Miss Mousumi Daimari
D/O- Ajit Daimari
Vill- Sonai Batabari
P.O.- Khusurabari Habi
P.S- Udalguri
Dist- Udalguri
BTR
Assam
Pin-78450

Advocate for the Petitioner : MR H P GUWALA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 25-06-2024

Heard Mr. H.P. Guwala, learned counsel for the petitioner Ratan Daimary, who has filed this application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for pre-arrest bail as he is apprehending arrest in connection with Udalguri Police Station Case No. 36/2024 under Sections 376/313/420/506 of the Indian Penal Code, 1860 (IPC for short).

2. Heard Mr. D.P. Goswami, learned Additional Public Prosecutor, Assam for the respondent State.

3. The allegation against the petitioner is that he induced the victim into a physical relationship with him with false promise of marriage. Thereafter, he forcefully committed sexual intercourse with the victim. On 23.06.2023, the petitioner also brought the victim to Rowta Government Hospital to terminate her pregnancy without her consent. After termination of her pregnancy, petitioner again had physical relationship with the victim by threatening her and by inducing her with false promises of marriage. On 07.03.2024, the victim learnt that the petitioner brought another girl to marry her and the victim made several attempts to contact the petitioner but he had already blocked her phone number.

4. The learned Additional Public Prosecutor has submitted that the victim has incriminated the petitioner in her statement under Section 164 of the CrPC and bail may be rejected.

5. I have scrutinized the Case Diary and I have also considered the

submissions at the bar with circumspection.

6. It is submitted on behalf of the petitioner that both the petitioner and the victim had a love affair since January, 2023 but due to some reason, their relationship turns sour and they went separate ways. The petitioner indeed stopped contact with the victim and he married another girl. The petitioner married another girl on 20.03.2024 as his earlier relationship was not continued with the victim. The petitioner has submitted that a false case has been slammed against him.

7. The learned counsel for the petitioner has also relied on the decision of this Court in *Biraj Kalita vs. State of Assam in Criminal Appeal No. 34/2012* decided on 24.11.2021 wherein it has been observed that:

“17. The above findings of the Trial Court and the Appellate Court were reversed by the Hon'ble Apex Court on ground that the facts of the case reveal that in the said case there was a valid consent of the prosecutrix for sexual intercourse. It was held that the prosecutrix was sufficiently intelligent to understand the significance of her act for which she had given consent. She knew very well the consequences of the act, particularly when she was conscious of the fact that there was a difficulty in their marriage. Her decision was taken to be a free, voluntary and conscious decision, which was consent for a sexual intercourse, and it cannot be said to be done due to any "misconception of fact". Finally the Hon'ble Apex Court has held that for application of Section 90 of IPC, two conditions must be fulfilled. Firstly, it must be proved that the consent was given under a misconception of fact and secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. The prosecution has not been able to establish this fact before the trial court.”

8. Reverting back to this case, I have carefully scrutinized the Case diary and the statements of the witnesses. I have also considered the submission on behalf of the petitioner that there is no case under Section 376 of the IPC against the petitioner. I have also considered the progress of investigation. The

petitioner is willing to cooperate with the investigation. The petitioner is willing to abide by any bail conditions if imposed upon him. The petitioner being a local resident is not a flight risk.

9. Considering all aspects and in view of my foregoing discussions, petition is allowed.

10. In the event of his arrest, the petitioner shall be enlarged on furnishing a bail bond of *Rs.50,000/- (Rupees Fifty Thousand)* with a suitable surety of like amount to the satisfaction of the arresting authority under the conditions that:

(i) The petitioner shall not exercise threats to the witnesses and try to influence them.

(ii) The petitioner shall not leave the jurisdiction of the jurisdictional Court without prior permission.

11. On breach of any of the bail conditions, bail order shall stand cancelled.

12. In the above terms, this Anticipatory Bail application stands disposed of.

13. Send back the Case Diary.

JUDGE

Comparing Assistant