

GAHC010097482024



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

Case No. : AB/1286/2024

MONJUR AHMED @ MONJURUL HOQUE
S/O FAZAR ALI, R/O VILL- JURIA, P.S.-JURIA, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. I CHOUDHURY, R L CHUTIA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.08.2024

Heard Mr. R.L. Chutia, learned counsel for the applicant and Mr. K. Baishya, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with **Juria P.S. Case No. 69/2024**, under Sections 294/323/354/379 of the IPC, this application under Section 438 of the Cr.P.C. is preferred by applicant, namely, **Monjur Ahmed @ Monjurul Hoque**, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Smt. X (name withheld), on 26.03.2024. The essence of allegation made in the aforesaid FIR is that on 26.03.2024, Md. Manjur Hoque called her over phone to take money and when she reached there, the accused assaulted her by slapping and administering upon her blow and also dragged her by holding her hairs and taken away her ear rings and by using slang languages he also assaulted her by means of a piece of wood and also took away her mobile phone.

4. Mr. Chutia, learned counsel for the applicant submits that this is the second pre-arrest bail application filed by the applicant and the first one, being A.B. No. 960/2024, was dismissed by this Court, vide order dated 01.05.2024. Mr. Chutia further submits that the ground for filing this second application is that from a reliable source, the applicant came to know that the investigation has already been completed and on such count, the custodial interrogation of him may not be required. Mr. Chutia also submits that the injuries sustained by the victim are not grievous in nature, as it does not fall in the category of hurt as defined under Section 320 of the IPC and that the applicant is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Baishya, learned Additional Public Prosecutor submits that he has received the case diary, but the same has not be updated since 30.04.2024. Mr. Baishya further submits that the materials, so far collected in the case diary, till 30.04.2024, show the complicity of the applicant with the alleged offence and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court with the assistance of Mr. Baishya, learned Additional Public Prosecutor.

7. Admittedly, this is the second pre-arrest bail application filed by the applicant and the first one, being A.B. No. 960/2024, was dismissed by this Court, vide order dated 01.05.2024.

8. It is to be noted here that in view of the decision of Hon'ble Supreme Court, in the case of **State of Tamil Nadu vs. S.A. Raja**, reported in **(2005) 8 SCC 380** and also in the case of **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and another**, reported in **(2004) 7 SCC 528**, the second bail application is maintainable on the ground of circumstances and in the present case the ground for filing this second pre-arrest bail application is not attracted the ratio laid down by Hon'ble Supreme Court.

9. It is also to be noted here that though it is contended that the injury sustained by the victim does not fall in the category of hurt as described under Section 320 of the IPC, the injury report issued by the Juria Mini P.H.C. reveals that the victim suffered two injuries, one is grievous in nature caused by sharp weapon and the other one is simple in nature caused by blunt object and that aspect can only be considered during the trial after examination of the Medical Officer/Doctor. Moreover, there was a clear finding in the order dated 01.05.2024, at Para No. 7 of the order of this Court and as such, the aforesaid matter cannot be re-opened again, unless it is set aside by a superior court.

10. Thus, the grounds, so assigned for filing this second application are found to be not maintainable. Besides the case diary indicates that the investigation is still going on.

11. Under the aforementioned facts and circumstances, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant and accordingly, the same stands dismissed.

12. The case diary be returned.

JUDGE

Comparing Assistant