

GAHC010106562024



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

Case No. : AB/1401/2024

INTAZ ALI
S/O JAHUR ALI, R/O VILL- N.C. KHARUPETIA, P.S.-DHULA, DIST-
DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR M HOQUE, MR. R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

31.08.2024

Heard Mr. M. Hoque, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam.

2] The petitioner is before this Court praying for pre-arrest bail apprehending arrest in connection with FIR dated 06.04.2024 which was received and registered as Dhula Police Station Case No.38/2024 under Sections 448/376/511

of the IPC.

3] In the said FIR it is alleged that on 04.04.2024 at about 11 P.M. the accused person named in the FIR entered in the house of the informant's mother and tried to rape her by taking advantage of the other family members being asleep as well as absence of the informant's father. In order to rescue herself from the clutches of the petitioner, the informant's mother caused injuries to the private parts of the accused with a blade and thereafter, surrendered herself before the concerned police station.

4] The said FIR was received and registered as Dhula Police Station Case No.38/2024 under Sections 448/376/511 of the IPC.

5] Learned counsel for the petitioner submits that there is actually a land dispute between the petitioner and the informant as they are neighbours. He submits that the allegation made in the FIR is in respect of an attempt to commit rape but no rape was committed and therefore, Section 376 IPC is not applicable in this case. He further submits that the petitioner suffered injuries and is required to undergo treatment in the hospital. He further refers to another FIR dated 06.04.2024, which was lodged by one informant, namely, Salema Khatun, wife of the present petitioner. In the said FIR it was alleged that the accused person named in the said FIR (who is the informant in the present proceeding), namely, Saidul Hoque and other accused persons forcibly took the petitioner inside a car and cut his private parts while he was returning home from his work. The said FIR was received and registered as Dhula Police Station Case No.37/2024 under Sections 120(B)/326/34 of the IPC.

6] Case diary, as called for, in the matter has been received and placed before this Court. The case diary has been carefully perused.

7] Case diary contains the statements of the victim recorded under Section 164 Cr.P.C. Perusal of statements reveal that the victim clearly implicated the accused petitioner of attempting to commit rape on her and as a consequence thereof and in order to rescue herself from his clutches, she caused injuries to the petitioner. From the case diary it is revealed that the victim after the incident surrendered before the police and was also taken into custody although subsequently released.

8] Having heard the learned counsel for the parties and upon careful perusal of the materials available in records, no offence under Section 376 IPC is seen to have been caused by the petitioner. However, the materials reveal that an attempt was certainly made to cause an offence under Section 376 IPC. Under Section 511 of the IPC, it is provided that whoever attempts to commit an offence punishable under this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no expressed provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence. Under the Indian Penal Code (IPC) the punishment for offence committed under Section 376 IPC shall not be less than 10 (ten) years and which may extend to life. Under such circumstances, the attempt to commit an offence under Section 376 IPC is also punishable as prescribed. The matter is still under investigation and perusal of the case diary also reveals that the victim is expressing threat from the family members of the petitioner. The materials available in the case diary incriminate the petitioner at this stage of investigation. The Court is of the view that proper

investigation may be hampered, if the petitioner is granted anticipatory bail as prayed for in view of the incriminating materials as is seen from the case diary.

9] Considering all the materials, this Court is not inclined to grant Anticipatory Bail to the petitioner. Accordingly, the Anticipatory Bail petition stands rejected. Return the case diary.

JUDGE

Comparing Assistant