

GAHC010111592024



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

Case No. : AB/1463/2024

SHAHINUR ISLAM
S/O SHAHJAMAL SK, VILL- BORO CHEDAMARI, P.S.-SOUTH SALMARA,
DIST-SOUTH SALMARA-MANKACHAR, ASSAM, PIN-783127

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 18.07.2024

Heard Mr. A. Z. Ahmed, learned counsel appearing for the petitioner. Also Heard Mr. K. K. Das, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioner, namely **Shahinur Islam**, apprehending arrest in connection with **South Salmara P.S. Case No. 334/2023** registered u/s **147/342/325/326/307/379** of the IPC.

The allegation in the FIR is that the accused petitioner has assaulted the son of the informant.

Mr. A. Z. Ahmed, learned counsel for the petitioner submits that the accused petitioner is totally innocent and no way connected with the alleged offence and there are no materials to implicate the accused petitioner with the offence alleged. He further submits that the informant has lodged a false case against the accused petitioner.

He further submits that the actual fact of the case is that on 19.11.2023 at about 11.30 after attending nature's call, when the wife and daughter of the co-accused returned to their respective beds, then the son of the informant entered into the bedroom of the daughter/niece of the accused/petitioner and gagged her mouth with cloth and with the threat to kill her with knife committed rape upon her. The daughter/niece of the co-accused somehow freed herself and managed to raise alarm and after hearing her hue and cry, the co-accused entered her bedroom and caught the son of the informant red-handed. Thereupon the informant was called, and everything was explained to him, whereupon the informant admitted the fault of his son and assured not to repeat such act in future and took away his son in a physically fit and fine condition in presence of some village elderly people and some of them are the member of the Village Defense Party (VDP). The informant in connection to the said incident on 20.11.2023 at 1.30 Am executed an agreement in the presence of some witnesses which transpire the actual fact of the case and the illegal act done by his son.

Mr. K. K. Das, learned Addl. P.P., on the other hand, strongly opposed the prayer of the pre-arrest bail and submits on the basis of the case diary that there are implicating materials available against the petitioner.

I have considered the submissions made at the Bar and have also perused the materials available on record including the case diary.

From the case diary, it appears that the investigation has substantially progressed. It further appears that the statement of the witnesses had already been recorded under Section 161 Cr.P.C. it further appears that out of seven co-accused, five of the co-accused has already been enlarged on bail by this Court.

Considering the totality of the matter, this Court is of the opinion that custodial interrogation of the petitioner may not be justified for the ongoing investigation.

Accordingly, it is provided that in the event of arrest, the petitioner, named above, shall be released on pre-arrest bail, in connection with the above noted case on furnishing bail bond of **Rs. 30,000/-** with one surety of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:

- (i) That the petitioner shall appear before the Investigating Officer within 10 days, failing which on and from the 11th day, this anticipatory order shall have no force;
- (ii) That the petitioner shall not hamper or tamper with the investigation in any manner; and
- (iii) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

Return the case diary.

This disposes off the anticipatory bail application.

JUDGE

Comparing Assistant