

GAHC010108002024



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

Case No: AB/1561/2024

MOBARAK ALI
S/O MAHAR UDDIN
R/O VILL- BALADOBA PART-2
P.S.-DHUBRI
DIST-DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:RABEYA BIBI
W/O JAHIDUR RAHMAN
VILL- BALADOBA PART-2
P.S.-DHUBRI
DIST- DHUBRI
ASSAM
PIN-783334

Advocate for : MR. A M KHAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 19.07.2024

Heard Mr. H.R.A. Choudhury, learned senior counsel, assisted by Mr.

A.M. Khan, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent, and Mr. D.K. Agarwala, learned counsel for the respondent no.2/informant.

2. 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 Mobarak Ali, who is apprehending arrest in connection with Dhubri P.S. Case No. 143/2024, under Sections 365/376/506/34 IPC, read with Section 4 of the POCSO Act.

3. Case diary is received. Perused the same.

2. It is submitted by Mr. Choudhury that the present petitioner is no way connected with the alleged offence. However, from a plaint reading of the FIR, it is seen that the only allegation against him is that he had threatened the family members of the informant and that apart, there is no other allegation against him. He being the VDP Secretary, is a responsible person and he is ready and willing to co-operate with the I.O. in the further investigation of the case if he is granted with the privilege of pre-arrest bail.

4. In this context, Mr. Das, learned Additional Public Prosecutor has submitted that from the materials available in the case diary, it is seen that the petitioner has not only threatened the informant and her family members, but he had also took active part in committing rape and kidnapping the minor victim. Accordingly, Mr. Das has raised objection and submitted that this is not at all a fit case to extend the privilege of pre-arrest bail to the petitioner.

5. Mr. Agarwala, learned counsel for the respondent no.2/informant has submitted that they have already filed an affidavit-in-opposition and it is further stated that the present petitioner is still threatening the informant and her family members and he, taking the advantage of his position, being the VDP

Secretary, also managing the police officer and out of his threatening only, the informant could not lodge the FIR immediately after the incident. He has also submitted that if the accused/petitioner is extended the privilege of pre-arrest bail, there is every possibility of hampering and tempering the witnesses and accordingly, he has submitted that this is not at all a fit case to extend the privilege of pre-arrest bail to the petitioner.

6. Considering the submissions made by the learned counsel for both sides and also considering the material available in the case diary and the submission made by the learned counsel for the respondent no.2/informant, I find it not to be a fit case to grant the privilege of pre-arrest bail to the petitioner at this stage and hence, this pre-arrest bail application is rejected.

7. Case diary is returned.

JUDGE

Comparing Assistant