

GAHC010120632024



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

Case No. : AB/1572/2024

SANDIPAN CHOUDHURY @ SUNNY AND ANR.
S/O LATE SWAPAN KUMAR CHOUDHURY, R/O HOUSE NO. 71,
GUNAMOYEE ROAD, TARAPUR, SILCHAR, P.S.-SILCHAR, DIST-CACHAR,
ASSAM

2: PARTHA DAS
S/O SATRUGUNHA DAS
C/O SANKAR SAHA
NORSING ROAD
OPPOSITE SILCHAR RAILWAY STATION
TARAPUR PART-1
SILCHAR
P.S.-SILCHAR
DIST- CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR K P PATHAK

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

27.06.2024

Heard Mr. R. Majumdar, learned counsel for the applicants and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This 2nd pre-arrest bail application, under Section 438 of the Code of Criminal Procedure ('Cr.P.C.', for short) is preferred by two applicants namely, **Sandipan Choudhury @ Sunny** and **Partha Das**, who have been apprehending arrest in connection with **Silchar P.S. Case No. 2105/2023**, under Sections 342/326/376(D) of the Indian Penal Code ('IPC', for short), for grant of pre-arrest bail.

3. The above noted case has been registered on the basis of an FIR lodged by one Smt. 'X' (name withheld), on 05.11.2023. The essence of allegations made in the FIR is that on 04.11.2022, at about 8:00 p.m., she went to the grocery shop, belonging to Sandipan Choudhury @ Sunny to make payment of a sum of Rs. 2,000/- and also to purchase some other grocery materials and after receiving a sum of Rs. 2,000/-, the brother-in-law of Sunny, namely, Partha Rabi Das, forcefully taken her to a room situated in the backside of the shop and tried to commit rape upon her and as she has resisted, accused Sunny took out a knife and assaulted over her left hand and Partha Rabi Das also pressed her neck causing injury over her neck and snatched away one gold chain, weighing about 1 bori, and thereafter, committed rape upon her one by one.

4. Mr. Laskar, learned counsel for the applicants submits that the ground for filing this second anticipatory bail application is that after rejection of the first anticipatory bail application, being A.B. No. 4156/2023, vide order dated 04.01.2024, the applicants had preferred one writ petition, being W.P.(C) No.

1273/2024, wherein, vide order dated 03.06.2024, a coordinate bench of this Court was pleased to direct the applicants to appear before the Investigating Officer ('I.O.', for short) on 29.06.2024 at about 10:00 a.m. Mr. Laskar further submits that the wife of one of the applicants had handed over one pen drive containing the CCTV footage of the place of occurrence to the I.O. and that the I.O. may be directed to examine the CCTV footage which will reveal the true story. Mr. Laskar also submits that the applicant No. 1 is a local businessman having landed property in Tarapur Gunomoyee Road, Cachar and the applicant No. 2 is a Government servant and permanent resident of the said locality and that they have also no any criminal antecedent. Mr. Laskar also submits that they are ready to cooperate with the investigating agency and therefore it is contended to allow the petition.

5. On the other hand, by producing the case diary before this Court, Mr. Lahkar, learned Additional Public Prosecutor submits that the I.O. has collected sufficient incriminating materials against the applicants. Mr. Lahkar further submits that the I.O. has sent the wearing apparels of the victim woman to the Forensic Science Laboratory ('FSL', for short) and the FSL report, received by the I.O., reveals that human blood and semen were found over the wearing apparels. Mr. Lahkar also submits that the offences are serious in nature and custodial interrogation of the applicants is warranted in the interest of investigation and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel 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. Lahkar, learned Additional Public Prosecutor.

7. It appears from the case diary that the I.O. has collected sufficient incriminating materials against the applicants. Further, it appears that the victim woman in her statement under Section 161 of the Cr.P.C. as well as 164 of the

Cr.P.C., in no uncertainty term implicated both the applicants with the offences alleged in the FIR. Also, the FSL report of the wearing apparels of the victim woman reveals human blood and semen over the wearing apparels. The medical report also indicates about the injury suffered by the victim. The case diary also indicates that the pen drive handed over the I.O. by the wife of one of the applicants is found to be empty.

8. The offences are serious in nature and the punishment prescribed for the same are also severe. And considering above facts and circumstances and balancing the interest of the applicants with that of society, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicants and therefore, the same is dismissed.

9. Though a contention is being made by Mr. Laskar, learned counsel for the applicants to direct the I.O. to examine the CCTV footage provided in the pen drive, yet, this Court afraid, it has the power to direct the I.O. to conduct investigation of a case in a particular way. It is the prerogative of the I.O. to conduct the investigation in accordance law within the parameters provided in Cr.P.C.

10. However, the applicants have to follow the direction given by the coordinate bench of this Court in the writ petition, being W.P.(C) No. 1273/2024.

11. The case diary be returned.

JUDGE

Comparing Assistant