

GAHC010127512024



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

Case No. : AB/1643/2024

AKHERE ZAMAN @AKHIRUZZAMAN SK. @ AKHERUZZAMAN
S/O ABDUS SALAM
PERMANENT RESIDENT OF
VILL- DOMARTOLA
P.O. RADHA MADHAB HAT, P.S. MANKACHAR,
DIST. SOUTH SALMARA MANKACHAR, ASSAM, PIN-783131
MOBILE NO. 9957679710

VERSUS

THE STATE OF ASSAM
TO BE REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

19.07.2024

- 1.** Heard Mr. A.K. Ahmed, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam.

2. This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, AkhereZaman @ Akhiruzzaman Sk. @ Akheruzzaman, who is apprehending his arrest in connection with PRC Case No. 235/2024.

3. The learned counsel for the petitioner has submitted that on the basis of an FIR which was lodged by the victim girl on 02.06.2018, wherein, it was alleged that the petitioner has committed criminal trespass into the house of the informant and raped the informant and thereafter, threatened her of killing her husband, Mankachar P.S. Case No. 329/2018 was registered and investigation was initiated. Ultimately, on completion of investigation, charge-sheet was laid against the present petitioner under Section 448/376/506 of the Indian Penal Code.

4. The learned counsel for the petitioner has submitted that the allegations levelled against the present petitioner are false and he is innocent.

5. It is submitted by the learned counsel for the petitioner that the petitioner came to know about the case only when he received the summons issued by the Court of learned Chief Judicial Magistrate, South Salmara, Mankachar, wherein, next date of appearance was shown as 09.07.2024.

6. The learned counsel for the petitioner has submitted that as from the summons received by the petitioner, it appears that the charge-sheet has been laid against him under Section 448/376 of the Indian Penal Code. Hence, even after receipt of the summons he apprehended that if

he appear before the Committal Court, which is a Court of learned Chief Judicial Magistrate, the same Court may not grant him bail due to the embargo of Section 437(1)(i) of the Code of Criminal Procedure, 1973 and he would be remanded to custody on his appearance. Hence, he approached this Court by filing this instant bail application.

7. The learned counsel for the petitioner has also submitted that the petitioner is ready to co-operate in trial and shall abide by any conditions imposed on him by this Court.

8. On the other hand, learned Additional Public Prosecutor opposed the grant of bail to the present petitioner on the ground that his conduct is not inspiring and he may not abide by the condition imposed and hence, bail may not be granted to the petitioner.

9. Considering the submissions made by the learned counsel for both the sides, and has perused the scanned copy of the case record of PRC Case No. 235/2024 pending in the Court of learned Chief Judicial Magistrate, South Salmara, Mankachar. Though it appears that the Committal Court has issued only summons against the present petitioner, however, it is also a fact that the PRC Case No. 235/2024 is pending before the Court of learned Chief Judicial Magistrate, South Salmara, Mankachar, which may not grant bail to the present petitioner even if he appears before such Court, in pursuant to the summons issued by it due to the embargo of Section 437(1)(i) of the Code of Criminal Procedure, 1973 and the said Court would be left with no other option but to remand the petitioner to custody on his appearance. As this Court is of the considered opinion that if the petitioner complies with the conditions

imposed on him, he may not be required to be detained behind the bars during the pendency of the trial against him.

10. In view of above, the above-named petitioner is directed to appear before the Court of learned Chief Judicial Magistrate, South Salmara, Mankachar, on 25th September, 2024, the next date fixed by the said Court and on his appearance, the said Court shall allow him to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

- (i) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of this case so as to dissuade such person from deposing against the petitioner in the ensuing trial before the Trial Court;
- (ii) That the petitioner shall appear before the Trial Court as and when so required by the Trial Court and shall cooperate in the trial;
- (iii) That the Trial Court may impose any additional condition for bail during trial if it deems fit to do so, to procure regular attendance of the petitioner during trial.

11. With the above observations this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant