

GAHC010130232024



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

Case No. : AB/1675/2024

DILIP TANTI
S/O LAXMAN TANTI
R/O VILL- BATASIPUR
P.S. DHEKIAJULI
DIST. SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP, ASSAM

2:SMTI. SACHI TELENGA
D/O MAYA TELENGA
VILL- BATASIPUR
P.S. SONITPUR
DIST. SONITPUR
ASSA

Advocate for the Petitioner : MR. R BARUAH

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

18.07.2024

1. Heard Mr. R. Baruah, 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, Dilip Tanti, who is apprehending his arrest in connection with Dhekiajuli P.S. Case No. 665/2014 (corresponding PR Case No. 765/1019) under Section 493/376 of the Indian Penal Code.

3. The gist of accusation in this case is that on 06.11.2014, the victim-girl had lodged an FIR before the Officer-In-Charge of Dhekiajuli Police Station, *inter alia*, alleging that the petitioner by giving false promise of marriage to the informant committed sexual intercourse with her against her will and accordingly, Dhekiajuli P.S. Case No. 665/2014 was registered under Section 493/376 of the Indian Penal Code and after completion of the investigation, charge-sheet was laid against the present petitioner before the Court of learned Chief Judicial Magistrate, Sonipur under Section 493/376 of the Indian Penal Code and cognizance of the aforesaid offences were taken by the Court of learned Judicial Magistrate First Class, Tezpur and processes were issued against the present petitioner .

4. The learned counsel for the petitioner has submitted that the petitioner went to Hyderabad for earning his livelihood during this period. The summons issued by the Court were received by the sister of the petitioner and therefore, he could not appear before the Court which issued the summons and

ultimately, due to the default of the petitioner, the Court of learned Judicial Magistrate First Class, Sonitpur had issued non-bailable warrant of arrest against the petitioner.

5. The learned counsel for the petitioner has submitted that the petitioner was earlier granted interim anticipatory bail by a co-ordinate bench of this Court in A.B. Case No. 1203/2015 by order dated 09.04.2015, where he was directed to appear before the Investigating Officer.

6. The learned counsel for the petitioner has submitted that though the petitioner appeared before the police, however, still he has been shown as an absconder in the charge-sheet, later on, after laying of the charge-sheet, this Court had directed the petitioner to appear before the Trial Court giving him interim protection of anticipatory bail. However, the learned counsel for the petitioner has submitted that due to his miscommunication with his engaged counsel the petitioner could not appear before the Trial Court and as a result he defaulted.

7. The learned counsel for the petitioner has submitted that this case is an old case of 2014 and the petitioner is ready to face the trial, however, as the case is pending before the Committal Court, which is the Court of First Class Judicial Magistrate and which may not grant him bail in a case involving offence under Section 376 of the Indian Penal Code due to the embargo of Section 437 (1)(i) and hence, he has prayed for allowing the petitioner to go on anticipatory bail.

8. On the other hand, learned Additional Public Prosecutor has opposed the grant of anticipatory bail to the petitioner on the ground that the Court of competent jurisdiction has issued non-bailable warrant of arrest against the present petitioner and the conduct of the petitioner is also not good so as to

give him protection under Section 438 of the Code of Criminal Procedure, 1973.

9. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the scanned copy of the PRC Case No. 765/2019. On perusal of the scanned copy of the case record, it appears that charge-sheet was laid against the present petitioner showing him as an absconder in the charge-sheet and presently, non-bailable warrant of arrest has been issued against the present petitioner and the next date of the case is fixed on 7th August, 2024. It also appears that earlier in the year 2015 itself, this Court was pleased to grant interim anticipatory bail to the present petitioner, however, he failed to comply with the directions of this Court to appear before the Trial Court and therefore, the protection granted earlier was lapsed.

10. It also appears that this is an old pending case of the year 2014 and it is a fact that due to embargo as the offence under Section 376 of the Indian Penal Code is involved in this case the Committal Court, which is a Court of Judicial Magistrate First Class, would be prevented by the embargo of Section 437(1)(i) of the Code of Criminal Procedure, 1973 to grant bail to the present petitioner even if he appears before the said Court and the said Court would be left with no other option but to send him to custody.

11. On the submissions made by the learned counsel for the petitioner and the circumstances narrated in the bail application for which the petitioner has gone through and considering the fact that the petitioner is ready to cooperate in the trial, the above-named petitioner is hereby directed to appear before the Investigating Officer of Trial Court, i.e. the Court of learned Judicial Magistrate First Class on the next date fixed within 15 days from the date of this order and on his appearance before the said Court, the said Court would 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 cooperate in his trial; and
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Trial Court.

12. Send back the case diary.

13. This Anticipatory Bail application is hereby disposed of.

JUDGE

Comparing Assistant