

GAHC010132252013



2024:GAU-AS:12482

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

Case No. : Crl.Pet./837/2013

MD. KAMRUL ISLAM
S/O BILAL AHMED R/O VILL- OKSEK TRISHGHARI P.O. AND P.S.
MURAJHAR DIST. NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR

2:MUSTT. ANUWARA BEGUM
D/O SAYED AHMED VILL- DIGHALJHAR P.O. MURAJHAR DIST. NAGAON
ASSAM
PIN- 782439

Advocate for the Petitioner : MR.S BANIK, MR.S K ROY,MR.S S DEY

Advocate for the Respondent : PP, ASSAM, ,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 11.12.2024

Heard Mr. S K Roy, learned counsel for the petitioner. Also
heard Mr. P Borthakur, learned Addl. PP, Assam.

The present petition is filed under section 482 Cr.P.C, 1973 for

quashing of Murajahar PS Case No.101/2013, corresponding to GR Case No.727/2013 registered under section 366/376 IPC.

The basic grievance leveled in the FIR is to the effect that the accused and the complainant though had a love affair, the accused took her in his bike and raped her against her will in a house at Doboka Mikir Basti. Thereafter at about 10 PM he went away in the pretext of fuelling his bike and after waiting for about an hour she called the local VDP Secretary and informed her father and she was recovered by the VDP Secretary.

The statement of the victim was also recorded under section 164 Cr.P.C. In her statement recorded under section 164 Cr.P.C she reiterated that though they had a love affair, the accused took her to a basti, raped her and subsequently did not marry her.

Though the learned counsel for the petitioner had submitted that it is a case of consensual sex and FIR has been lodged only for not marrying, however, this court did not find any merit in such argument, more particularly, in view of the fact that both in the FIR and the 164 statement, though the victim admitted of having love affair but specifically alleged rape by the accused.

It is not a case of the victim that the victim and the accused out of their love affair were having consensual sexual relation, however, subsequently the accused did not marry and therefore, the FIR was lodged, rather it was specifically alleged that on 24.05.2013 she was raped by the accused. The fact also remains that after perusal of the case diary, this court earlier rejected the anticipatory bail of the petitioner twice.

In the considered opinion of this court and in the totality of the matter, this court is not inclined to quash the FIR, more particularly, when prima facie offence of section 376 IPC is disclosed in the FIR, this court would not like to stall the investigation at this stage. However, while parting with the record, it is made clear that the investigating authority shall investigate the matter without being influenced by any of the observations made in this case, inasmuch as such observations are made for the purpose of this petition only.

In view of the aforesaid, the instant criminal petition stands dismissed.

Interim order passed earlier stands vacated.

The LCR be returned back.

JUDGE

Comparing Assistant