

GAHC010208942024



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

Case No. : AB/2677/2024

RAFICK AHMED
S/O MD. SHAJAHAN ALI
R/O SONARI TOWN, WARD NO. 2, P.O. AND P.S. SONARI, IN THE DISTRICT
OF CHARAIDEO, ASSAM, PIN-785690

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : RUBI GOGOI,
Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24/10/2024

Heard Mr. D Das, learned Senior counsel assisted by Ms. Rubi Gogoi, learned counsel for the petitioner and Ms. S B Hazarika, learned Additional Public Prosecutor, Assam for the State.

2. The petitioner, namely, **Rafick Ahmed**, son of Md. Shajahan Ali, resident of Sonari Town, Ward No. 2 under Sonari Police Station of District-Charaideo, has filed this application under Section 482 of BNS, 2023, seeking pre-arrest bail apprehending his arrest in **Sonari P.S. Case No. 82/2024** registered under Section 354B IPC read with Sections 74/351(3) of the BNS, 2023 corresponding to G.R. No. 196/2024.

3. As per the FIR of the case dated 13.07.2024 lodged by the complainant before the Officer-in-Charge of Sonari Police Station that she with her ten years old minor daughter resides at Sonari

because of her service. Since few days back, the petitioner came to known to her and started coming to her rented house and he also forced her to visit Guwahati along with her. On 7th April last around 9:00 PM, he visited her rented house and forcefully opened her kurti and laid her in the bed, opened his pant and tried to commit rape on her. However, she could save herself on that attempt. He proposed her to be his wife and threatened her that if she does not listen to her or inform others he will take away her minor daughter. Being scarred she did not inform the said incident to others. On the next day itself of the said incident she left her rented house and went to her house at village. On 12.07.2024 around 2:00 PM while she was waiting at Bengenabari Tiniali, the accused came there and called her nearby by pulling her hand asking her whether she will stay with him as his wife or not otherwise he will take away his daughter. She somehow managed herself, came away from him and told everything to his husband on reaching home. By the said FIR the informant requested the concerned police authorities to take appropriate action against the accused person.

4. Said FIR of the informant dated 13.07.2024 was accordingly registered as Sonari P.S. Case No. 82/2024 under Section 354B IPC.

5. It is contended by the petitioner that he is a permanent resident of Ward No. 2 Sonari Town and is a news reporter working in News Live TV as its senior correspondent at Sonari without having any criminal antecedent. On 10.07.2024, a news item was telecast in the News Live TV channel regarding corruption committed by the President of Rajapukhuri Gaon Panchayat with others of Charaideo District on the basis of the materials available and on the information given by the local public. Said news item was published by the petitioner being the senior correspondent of Sonari Charaideo of said News Live TV channel.

6. After publishing of such news in the electronic media, petitioner received threatening from different persons one of which is Sri Hemanta Lahon, husband of the complainant informant who is the supervisor of D.K. Brick Field owned by the MLA of Sonari LAC, who threatened the petitioner through Facebook, Whatsapp, Telegram etc. In that regard pertaining to threatening given to the petitioner by said Hemanta Lahon, a news item was published on 11.07.2024 and that said Hemanta Lahon threatened him saying that if he does not stop the telecast in the TV regarding corruption committed by the President of the Rajapukhuri Gaon Panchayat and others, he will file a false case against him and get arrested by police whereby he will be subjected to harassment and torture, further threatening him to face the dire consequences. As such, the petitioner on 10.07.2024 lodged an FIR before the Sonari Police Station about such threatening given to him by Sri Hemanta Lahon of

Sonari Bahbari Gaon serving in B.K. Brick Field owned by the MLA of Sonari LAC intimating police that if any sudden untoward incident occurs with him or his family for that said Hemanta Lahon and Debajit Hazarika, President of Rajapukhuri Gaon Panchayat will be responsible.

7. Ms. Hazarika, learned Additional Public Prosecutor, Assam has placed the case diary of Sonari P.S. Case No. 82/2024 before the Court today.

8. Pursuant to the order of the Court dated 22.10.2024, Ms. Hazarika, learned Additional Public Prosecutor, placed a written report of the Officer-in-Charge of Sonari Police Station, Charaideo dated 23.10.2024 apprising the Court that the petitioner on 10.07.2024 lodged an FIR at Sonari Police Station, as stated above, but same has not been registered as the alleged information was non-cognizable. However, the said authority submitted a report before the District Magistrate, Charaideo in a proceeding under Section 126 BNSS both against the petitioner as well as Hemanta Lahon.

9. On perusal of the case diary, it is seen that the statement of the informant both under Section 181 BNSS as well as under Section 183 BNSS was recorded by the Civil Judge (Junior Division) cum JMFC, Charaideo on 15.07.2024.

10. It is seen that the complainant in her FIR dated 13.07.2024 did not state that the petitioner rape her but sometimes on the night of 7th April, he made an attempt. However, in her statement under Section 183 BNSS, the complainant stated that the petitioner on the night of 07.04.2024 gagged her mouth and rape her. Though the complainant was sent for her medical examination to the Sonari District Hospital, Sonari, Charaideo on 13.07.2024 by police, she did not undergone any such medical test.

11. From the case diary, it is also seen that on 14.07.2024 police informed the petitioner over phone to attend the said police station relating to said Sonari P.S. Case No. 82/2024, pursuant to which he appeared before the concerned Investigating Officer of the case on 15.07.2024 and his statement was duly recorded by the concerned Investigating Officer of the case.

12. It is also seen from the case diary that on 15.07.2024 itself, the petitioner was asked to attend the said police station on 18.07.2024 to sign the notice under Section 35 (3) of the BNSS but he did not appear before police on 18.07.2024 and thereafter.

13. The case diary placed before the Court today was forwarded by the concerned Investigating Officer of the case on 13.10.2024 and the said case diary ends on 26.07.2024.

14. Considering the above, the Court is of the view that custodial detention of the petitioner, namely, **Rafick Ahmed** is not warranted to investigate the said Sonari P.S. Case No. 82/2024. As such, this pre-arrest bail application of the petitioner is accepted.

15. Accordingly, in the event of arrest of the petitioner, namely, **Rafick Ahmed**, in said Sonari P.S. Case No. 82/2024 registered under Sections under Section 354B IPC read with Sections 74/351(3) of the BNS, 2023, he shall be released on bail on furnishing a bail bond of Rs.50,000/- with 2 (two) local sureties of the like amount, one of which shall be a Government employee, either State or Central Government, to the satisfaction of the arresting authority, subject to the conditions that the petitioner - **(i)** shall appear before the concerned Investigating Officer of said Sonari P.S. Case No. 82/2024 **on or before 30.10.2024** and thereafter, as and when he is required for necessary investigation of the case; **(ii)** shall not leave the territorial jurisdiction of said Sonari Police Station, without obtaining prior written permission from the concerned I/O of the case; **(iii)** shall not hamper with the investigation, or tamper with the evidence of the case; **(iv)** shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; **(v)** shall surrender his passport, if any, before the Investigating officer of Sonari P.S. Case No. 82/2024 on or before 30.10.2024, obtaining necessary acknowledgment in that regard and **(vi)** shall not involve himself in any criminal activities and further shall not indulge with such act again.

16. Violation of any of the aforesaid terms and conditions by the petitioner, namely, Rafick Ahmed, pre-arrest bail granted to him in said Sonari P.S. Case No. 82/2024 shall stand automatically vacated.

17. Accordingly, this pre-arrest bail application stands allowed to the extent above.

18. Return the case diary.

JUDGE

Comparing Assistant