

GAHC010225622024



2024:GAU-AS:11236

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

Case No. : Bail Appln./3302/2024

AMINUR RAHMAN
S/O AKBAR ALI MIAH, VILL- POKALAGI PT-II, P.S.-GOLAKGANJ, DIST-
DHUBRI, ASSAM, PIN-783335

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A Z AHMED,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

18.11.2024

1. Heard Mr. H.R.A. Choudhury, learned Senior Counsel, assisted by Mr. A.Z. Ahmed, learned counsel for the petitioner. Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor appearing for the State of Assam.

2. This application under Section 483 of BNSS, 2023 has been filed by the petitioner, namely, Aminur Rahman for his bail, in connection with Dhubri Case No. 300/2024 under Section 61(2)(a)/70(1)/351(3) of BNS, 2023. The petitioner has been detained behind the bars since 28.08.2024 (for last 82 days).

3. This is for the second time, the petitioner had approached this Court seeking bail in connection with the aforesaid case. His earlier bail application was rejected by this Court on 04.10.2024 in Bail Application No. 2934/2024 after perusal of the case diary.

4. The gist of accusation in this case is that on 28.08.2024, the victim women had lodged an FIR before the Superintendent of Police, Dhubri, *inter alia*, alleging that she was subjected to mental and physical cruelty by her husband, who has been named as accused No. 1 in the FIR. It is alleged in the FIR that the present petitioner, along with one Firdus Bepari tried to rape her, however, they could not do so due to interference of the other people. Thereafter, they hide the accused No. 1, namely, Samsul Hoque in some unknown place and prevented him to lead conjugal life with the informant.

5. It is also alleged that on 17.07.2024 at about 12:00 noon, the present petitioner called the informant to his rental house at Naya Masjid promising her to settle the dispute between the informant and her husband Samsul Hoque. However, he committed forceful rape on the informant and threatened her to kill her by throwing acid on her if she discloses the same to any person.

6. It is also alleged in the FIR that thereafter on 04.08.2024, the informant was called at Golakganj by the present petitioner and Fidus Bepari and she was asked to establish illicit relationship with them on the pretext that they would help her by bringing her husband Samsul Hoque to her.

7. The learned Senior Counsel for the petitioner has submitted that though the present petitioner is approaching this Court for second time after his earlier bail application was rejected on 04.10.2024, however, since then more than 44 days has lapsed and considering the lapse of considerable period of time and the progress of the investigation, further custodial detention of the petitioner may not be necessary.

8. The learned Senior Counsel for the petitioner has also submitted that the petitioner has also able to get hold of certain documents which were not available with him when he approached this Court on earlier occasion, namely, an agreement for revocation of marriage agreement entered into between the first informant (victim) as well as her husband Samsul Hoque on 26.04.2023, whereby they decided to revoke their marriage agreement, which was executed by them. The learned Senior Counsel for the petitioner has also submitted that the petitioner has suppressed about this revocation deed in her FIR.

9. The learned Senior Counsel for the petitioner has also submitted that the petitioner has also produced an order of this Court dated 17.10.2023 passed in Crl. Pet. No. 993/2022, whereby, this Court was pleased to quash the FIR as well as charge-sheet in Golakganj P.S. Case No. 220/2021 under Section 376 of the Indian Penal Code filed by the

victim women of this case against one Jamir Alom. The learned Senior Counsel for the petitioner has also submitted that the said charge-sheet was quashed as a settlement was arrived at between the parties and the victim women was not inclined to proceed with the case.

10. It is submitted by the learned Senior Counsel for the petitioner that the victim women is habituated in filing false complaint against innocent persons to pressurize them and to take advantage out of the said situation.

11. The learned Senior Counsel for the petitioner has also submitted that the informant had suppressed these facts in the false FIR lodged against the present petitioner.

12. On the other hand, Mr. R.R. Kaushik, learned Additional Public Prosecutor has produced the case diary of Dhubri Case No. 300/2024 and has submitted that there are sufficient materials against the petitioner in the case diary. He has submitted that in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 the victim women has implicated the petitioner. She has categorically stated that in the month of July, 2024 the present petitioner committed forceful sexual intercourse with her in his rented room near Naya Masjid.

13. The learned Additional Public Prosecutor has also submitted that no new ground has been shown by the petitioner for filing the present bail application. He has also submitted that no fresh material effecting the merit of the case has been brought to light by the petitioner, which justifies taking a liberal view in consideration of his bail application.

14. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record, including the case diary of the Dhubri Case No. 300/2024.

15. Though, there is no complete embargo in filing successive bail application, after rejection of an earlier bail application, however, unless there is a change circumstance or a new material is brought to the notice of the Court which requires a fresh consideration of the plea raised by an accused, normally successive bail applications are not considered favourably.

16. In the instant case, the earlier bail application was rejected on 04.10.2024, and since then 44 days have lapsed. The petitioner has been detained behind the bars for last 82 days, which is a considerable period of time. On perusal of the case diary, it also appears that after rejection of the earlier bail application of the petitioner, no fresh material has been collected by the Investigating Officer. The lapse of considerable period of time since the date of rejection of the earlier application is in itself a new ground for filing of this subsequent application by the petitioner. Considering the fact that the Investigating Officer has already recorded the statement of relevant witnesses, including the victim woman and have also collected the medical report of the victim woman, the lapse of considerable period of time since the date of rejection of earlier bail applications is a ground which may be considered favourably while considering the instant bail application filed by the petitioner.

17. Considering the period of detention already undergone by the present petitioner as well as the fact that no further progress has been

made in the investigation since 21.09.2024, this Court is of the considered opinion that if the petitioner co-operates with the Investigating Officer, his further custodial detention may not be necessary for fair completion of the investigation of Dhubri PS Case No. 300/2024.

18. In view of the above reasons, the above-named petitioner, is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with a suitable surety of like amount subject to the satisfaction of the learned Chief Judicial Magistrate, Dhubri with following conditions:

- i. That the petitioner shall co-operate in the investigation;
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to the victim woman or to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.

19. With the above observations, this bail application is hereby disposed of.

20. Send back the case diary.

JUDGE

Comparing Assistant