

GAHC010241292024



2024:GAU-AS:11237

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

Case No. : AB/3018/2024

FIRDUS RAHMAN @ FIRDUS BEPARI,
S/O- LATE SAMSER ALI R/O- VILL- DHARMASALA FT-III, P.S- DHUBRI
DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, MR A AHMED, MR. I U
CHOWDHURY, MR. A 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 482 of the BNSS, 2023 has been filed by the petitioner, namely, Firdus Rahman @ Firdus Bepari, praying for grant of anticipatory bail in connection with Dhubri P.S. Case No. 300/2024 under Section 61(2)(a)/70(1)/351(3) of BNS, 2023. It is pertinent to mention herein that on an earlier occasion also, the petitioner approached this Court apprehending his arrest in connection with the aforesaid case. However, by order dated 11.09.2024, passed in A.B. No. 2423/2024, his anticipatory bail was rejected after perusal of the case diary.

3. The gist of accusation is that on 09.08.2024, the victim woman had lodged an FIR before the Superintendent of Police, Dhubri, *inter alia*, making certain allegations against one Samsul Hoque, who she claims to be her husband and his family members. In the said FIR, she has also alleged that the present petitioner and one Aminur Rahman had tried to rape her in her rented house but failed in their attempt. She has also made specific allegations against Aminur Rahman of raping her on 17.07.2024. In the FIR, she has also made allegations that on 04.08.2024, the present petitioner and Aminur Rahman asked her to come to Golakganj for establishing illicit relationship and to make videography of the same on the pretext that they would resolve her matrimonial dispute with her husband i.e., Samsul Hoque.

4. The learned Senior Counsel for the petitioner has submitted that though the petitioner has approached this Court on an earlier occasion seeking anticipatory bail and though the same was rejected, however, certain new facts came to the light which were not pointed out to this Court while moving the earlier bail application.

5. The learned Senior Counsel for the petitioner has submitted that the informant has stated in the FIR lodged by her that on 22.05.2023 her marriage was solemnized with Samsul Hoque by executing a Kabin-Nama. However, the learned Senior Counsel for the petitioner submits that the informant has suppressed the fact that before 22.05.2023, i.e., on 26.04.2023, a deed of revocation was entered into between the victim woman and Samsul Hoque, whereby they agreed to revoke their earlier marriage agreement dated 10.04.2023 and also agreed that they would marry other person and not interfere in each other's life.

6. The learned Senior Counsel for the petitioner submits that this fact was concealed by the informant in the FIR lodged by her against the present petitioner. The learned Senior Counsel for the petitioner has also submitted that the petitioner could also gather some additional documents like the affidavit dated 22.02.2010 sworn by the informant (victim woman) which shows that on 25.06.2009, she was married to one Aminur Islam from whom she took divorce.

7. The learned Senior Counsel for the petitioner has also produced a copy of order dated 17.10.2023, passed in CrI.Pet. No. 993/2022, whereby the charge-sheet laid in Golakganj P.S. Case No. 220/2021 involving offence under Section 376 of the Indian Penal Code was quashed. It is also submitted by the learned Senior Counsel for the petitioner that the said charge-sheet was quashed on the basis of a settlement arrived at by the informant of this case with the accused of that case namely, Jamir Alom.

8. The learned Senior Counsel for the petitioner has submitted that

the conduct of the informant (victim woman) shows that she is in habit of lodging false case involving sexual offence against innocent person to falsely implicate them and take advantage out of that situation.

9. The learned Senior Counsel for the petitioner has submitted that considering the new materials, i.e., Annexure-(iii), (v) and (vi) annexed with the bail application by the present petitioner as well as considering the fact that in the meanwhile, other co-accused persons have already been released on bail, the custodial detention of the present petitioner may not be necessary and hence, he may be granted anticipatory bail in this case.

10. On the other hand, Mr. R.R. Kaushik, learned Additional Public Prosecutor has submitted that there are sufficient materials against the present petitioner incriminating him in the offence of attempt to outrage the modesty of the victim woman in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 the victim woman has implicated him of attempting to outrage her modesty.

11. The learned Additional Public Prosecutor has also submitted that no change circumstances or fresh material has been pointed out by the learned Senior Counsel for the petitioner justifying allowing the second anticipatory bail by the present petitioner. He has thus vehemently opposed the grant of anticipatory bail application filed by the present petitioner.

12. I have considered the rival submissions made by the learned counsel for both the sides and have perused the materials available on

record, including the case diary of Dhubri P.S. Case No. 300/2024 very carefully.

13. On perusal of the record, it appears from record that the allegation of rape was levelled by the victim woman against one Aminur Rahman. The said Aminur Rahman was arrested in connection with this case and after undergoing detention for 82 days, he has been allowed to go on bail, by order dated 18.11.2024 in Bail Application No. 3302/2024. The allegation against the present petitioner is that he also gave indecent proposal to the victim woman, along with co-accused Aminur Rahman. It is also alleged that the present petitioner also tried to outrage the modesty of the victim woman. On perusal of the case diary, it appears that in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 the victim woman has stated that on 04.08.2024, the present petitioner, along with co-accused Aminur Rahman made indecent proposals of having illicit relationship with the victim woman and he also held her hand.

14. The learned Senior Counsel for the petitioner has submitted that this allegation is not believable as the present petitioner is a teacher by profession and is the brother-in-law of accused Aminur Rahman. The production of new documents which are annexed as Annexure-(iii), (v) and (vi) also shows that certain relevant facts were suppressed by the victim woman in her FIR. It is also pertinent to note that she earlier also filed similar allegation of rape against one Jamir Alom, which was latter on settled amicably between the said Jamir Alom, and the victim woman. Another relevant fact in this case is that the Investigating Officer has

recorded the statement of relevant witnesses and after 21.09.2024, the investigation has not progressed any further. After said date, on two occasions, Investigating Officer has made attempts to apprehend the present petitioner, however, he has not been able to do so. From the progress made in the investigation, as well as also considering the fact that the co-accused persons of this case are already granted bail, the custodial interrogation of the present petitioner at this stage, does not appear to be necessary for fair completion of the investigation of Dhubri P.S. Case No. 300/2024, if the petitioner co-operates in the investigation.

15. In view of the above reasons, the petitioner is hereby directed to appear before the Investigating Officer of Dhubri P.S. Case No. 300/2024, within a period of 10(ten) days from the date of this order and co-operate with the Investigating Officer in the investigation of the case. If he does so, within the stipulated period of time, in the event of his arrest in connection with Dhubri P.S. Case No. 300/2024, the above-named petitioner shall be allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority with following conditions:-

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

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

17. Send back the case diary.

JUDGE

Comparing Assistant