

GAHC010024632024



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

Case No. : AB/3653/2023

AMIRUL ISLAM
S/O- ABDUS SALAM
R/O- BHUIYABARI P.S- LAHARIGHAT
DIST- MORIGAON
ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P ASSAM .

Advocate for : MR. J ALI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 13.02.2024

Heard Mr. S. H. Sikdar, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent and Mr. B. Islam, learned counsel appearing on behalf of the victim/informant.

This is an application under Section 438 of the Code of Criminal Procedure, 1973 praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Laharighat P.S. Case No. 226/2023, under Sections 120(B)/376/341/354/325/324/506 of the Indian Penal Code.

It is submitted by Mr. Sikdar, learned counsel for the petitioner, that the accused/petitioner is innocent and false and concocted allegation has been brought against him only to harass him and his family members. On earlier occasion also, an F.I.R. was lodged against the present accused/petitioner with the allegation of rape along with other Sections, wherein he was arrested and was subsequently released on bail. However, the subsequent F.I.R. has been lodged against him, along with his family members, with some false and concocted allegation which is also not tenable in the eye of law and can be considered as an statement under Section 161 Cr.P.C. only. In that context, the learned counsel for the petitioner also relied on a decision of Hon'ble Apex Court passed in the case of **T. T. Antony Vs. State of Kerala & Ors.**, reported in **(2001) 6 SCC 181**. Further he submitted that after obtaining the interim pre-arrest bail in connection with this case, the accused/petitioner appeared before the I.O. and his statement has also been recorded under Section 161 Cr.P.C. He is still ready and willing to co-operate with the I.O. in the further investigation of the case if he is granted with the privilege of pre-arrest bail.

In this context, Mr. Das, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials against the present

accused/petitioner and from the statement made by the victim under Section 161 Cr.P.C. and the statement of the other witnesses or the neighbors of the accused/petitioner, it is seen that they brought sufficient incriminating materials against the present accused/petitioner. However, it is submitted that after obtaining the interim pre-arrest bail, the accused/petitioner has appeared before the I.O. He further submitted that it is basically a case between 2 (two) wives and the victim was subsequently got married with the present accused/petitioner and thereafter the dispute arose between the parties.

Mr. B. Islam, learned counsel appearing on behalf of the victim/informant, has submitted that they have filed an affidavit-in-opposition wherein they have also annexed the order passed by the learned Sessions Judge rejecting the anticipatory bail prayer made by the accused/petitioner. He further submitted that after getting the bail in the earlier case, the petitioner is still threatening the victim and after coming out from the jail, he again assaulted the victim and there was a sexual assault on her and the child was also got aborted and presently also, she is still suffering and bleeding from her private parts. Further he submitted that the accused/petitioner is still threatening the victim violating the terms and conditions of the bail and if the accused/petitioner is enlarged on bail, there is every probability of hampering or tampering the evidences of the other witnesses also. Accordingly, the learned counsel raised vehement objection in granting pre-arrest bail to the accused/ petitioner.

After hearing the submissions made by the learned counsels for the parties and also considering all aspects of the case, it is seen that due to threatening and assault on the victim, she had to lodge the second F.I.R. with

the allegation of rape along with the allegation of assault and threatening as well as criminal intimidation. Further it is seen that the present F.I.R. is lodged with some new and subsequent development after lodging the initial F.I.R. and thus, the present F.I.R. cannot be considered as the second or subsequent F.I.R. However, it is seen that the accused/petitioner has appeared before the I.O. and his statement was recorded under Section 161 Cr.P.C., but this Court, vide order dated 30.01.2024, has vacated the interim pre-arrest bail granted to him considering the incriminating materials brought by the victim in her statement recorded under Section 161 Cr.P.C.

Considering the materials in the Case Diary, statement of the victim as well as the other witnesses and also considering the threatening made by the present accused/petitioner violating the conditions of the bail, I do not find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioner and accordingly the same stands rejected.

In terms of above, this anticipatory bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant