

GAHC010256162023



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

Case No. : AB/3959/2023

MD AMZAD ALI
S/O ALI HUSSAIN
R/ DAUPATARI BAZAR
P.O. AND P.S. CHANGSARI, DIST. KAMRUP, ASSAM
PIN-781101

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:XXXX
D/O JIAUR RAHMAN
VILL- SUNGABARI
P.S. ORANG
DIST. UDALGURI
ASSAM
PIN- 78450

Advocate for the Petitioner : MR W R MEDHI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

08.02.2024

Heard Mr. W.R. Medhi, learned counsel for the applicant; Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent; and Mr. S.S.S. Rahman, learned counsel for the for the respondent No. 2.

2. Apprehending arrest in connection with the **Changsari P.S. Case No. 308/2023**, under Section 376 of the IPC read with Section 4 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Md. Amzad Ali** for grant of pre-arrest bail.

3. It is to be noted here that the said case has been registered on the basis of one F.I.R., lodged by one Smti 'X' [name withheld], on 14.09.2023. The essence of allegation made in the FIR is that one of her cousin namely, Hanif Ali was to pick her up in the market, but, he could not pick up her and then at about 9 pm, one Amzad Ali taken her to his house by assuring her that on the next morning he will make necessary arrangement for sending her to her native place and provided a room behind his house. Thereafter, at about 11 pm while she was sleeping in the said room, the persons entered into her room and committed rape upon her under threat.

4. Mr. Medhi, learned counsel for the applicant submits that this is the second anticipatory bail application preferred by the applicant and that the earlier one was rejected by this Court, vide order dated 09.10.2023, in AB No. 3305/2023. Mr. Medhi referring to some of the documents regarding treatment of some of the family members of the applicant submits that the mother, brother and sister of the applicant are suffering from some serious ailments and

that their special treatment is required outside the State and the applicant is the only person to take them outside the State. Mr. Medhi also submits that the applicant is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, by producing the Case Diary before this Court, Mr. Barua, learned Additional Public Prosecutor submits that the investigation is going on and the case is pending for arrest of the applicant. Mr. Barua further submits that the IO has collected sufficient incriminating materials against the applicant and therefore, it is contended to dismiss the petition.

6. Whereas, Mr. Rahman, learned counsel for the respondent No. 2 submits that as per his instruction the diseases, in which the relatives of the applicant is suffering from are not serious in nature. Mr. Rahman further submits that as his instruction the applicant is the person, who has committed the rape upon the victim girl and that the allegations are serious in nature therefore, Mr. Rahman has also contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court with the assistance of the learned Additional Public Prosecutor and also perused the medical documents enclosed with the petition.

8. It appears that this is the second anticipatory bail application preferred by the applicant and that the earlier one was rejected by this Court, vide order dated 09.10.2023, in AB No. 3305/2023. Further, it appears that this application is preferred only on the medical ground, in respect of ailments of the relatives of the applicant. But, the medical documents enclosed with the petition

indicate that the diseases, in which the relatives of the applicant are suffering from, are not serious in nature.

9. It is to be noted here that in the Page No. 39 of the petition it is stated that the brother of the applicant namely, Hussain Abul Kalam requires Blood Investigation along he requires Neuro Psychiatrist Opinion, and in the Page No. 41 of the petition it is stated that the mother of the applicant namely, Abeda Begum is suffering from Hepatomegaly with Fatty Changes of Liver & Pancreas, Mild Splenomegaly and Insignificant PVRU. It is the categorical submission of the learned counsel for the informant/victim that the aforesaid diseases are not serious, requiring urgent medical attention.

10. Having considered above and also having considered the nature and gravity of the offence as well as the punishment prescribed for the same and also considering the submissions of learned counsel for both the parties, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant and therefore, this AB stands dismissed.

11. The case diary be returned.

Comparing Assistant

JUDGE