

GAHC010265072023



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

Case No. : AB/4009/2023

HIRA KANTA CHANGMAI
S/O LATE TILSWAR CHANGMAI,
R/O NO. 1 LENGRI CHAUDANG GAON
P.S. MORAN
DIST. DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 04.01.2024

Heard Mr. S.M. Abdullah, learned counsel for the applicant. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Moran P.S. Case No. 108/2023 under Sections 498(A)/376/506/34 of the IPC, this application under Section

438 Cr.P.C. has been preferred by the applicant, namely, Hira Kanta Changmai, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Smt. X (name withheld) on 02.11.2023. The essence of allegation made in the FIR dated 02.11.2023 is that she got married to Gaurav Changmai, son of Hira Kanta Changmai in the year 2016 and thereafter, lived together with her husband in her matrimonial home. After the marriage, her husband and her in-laws subjected her to both physical and mental cruelty and also did not provide her food, for which her daughter suffered malnutrition and consequently she died. Further in the month of January, 2023, after the birth of her second child, her father-in-law, namely, Hira Kanta Changmai, while her family members were not present in her home, entered into her room and committed rape upon her and also threatened her not to disclose the said incident to anybody else, and also threatened to kill her and her daughter and to drive her out from matrimonial home.

4. The learned counsel for the applicant submits that the applicant is a retired person of 66 years old and that the allegations levelled against the applicant are false and that the informant left the matrimonial home after picking up quarrel with her husband and thereafter, the applicant had filed one case against Pradip Baruah and Bubul Changmai of Bamunbari, upon which a case, being Moran P.S. Case No. 107/2023, had been registered and the present FIR is the counterblast of the said case and that the applicant is ready to cooperate with the investigating agency and is contended to allow the petition.

5. On the other hand, Mr. B. Sarma, learned Addl. Public Prosecutor has produced the case diary before this Court and submits that the I.O. has collected sufficient incriminating materials against the applicant in connection

with the allegation made in the FIR and in both of her statements, under Sections 161 and 164 Cr.P.C., the victim has implicated the present applicant and therefore, Mr. Sarma has opposed the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. B. Sarma, learned Addl. Public Prosecutor.

7. The case diary indicates that the I.O. has collected sufficient incriminating materials against the applicant. The victim, in her statement under Section 161 as well as 164 Cr.P.C., has implicated the accused with the offence alleged in the FIR. Further, it appears that the offence is of serious nature, investigation is still going on and at this stage, it cannot be said that custodial interrogation of the applicant is not required in the interest of investigation.

8. Under the aforesaid facts and circumstances, this Court is of the view that this is not a fit case where the privilege of anticipatory bail can be granted to the applicant and accordingly, the anticipatory bail stands dismissed.

9. Case diary may be returned.

JUDGE

Comparing Assistant