

GAHC010271322023



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

Case No. : AB/4086/2023

RUHUL AMIN @ RAHUL HUSSAIN @ RUHUL
S/O LT. HUZUR ALI
R/O VILL- UDMARI PT. IV, PS. BILASIPARA, DIST. DHUBRI, ASSAM

VERSUS

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

2:AJMIRA KHATUN
W/O LATE AHMED HUSSAIN
VILL- UDMARI PT. IV

P.S. BILASIPARA
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18.01.2024

1. Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. K. Baishaya, learned Additional Public Prosecutor for the State as well as Mr. K. R.

Patgiri, learned counsel for the victim/informant.

2. This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed for the second time by the petitioner, namely, Ruhul Amin @ Rahul Hussain @ Ruhul, who is apprehending his arrest in connection with Bilasipara P. S. Case No. 213/2023 registered under Sections 448/376(1)/506 of the Indian Penal Code.

3. It is pertinent to mention herein that on an earlier occasion when the petitioner approached this Court by preferring an anticipatory bail application which was registered as AB No. 2141/2023 his prayer was rejected by order dated 26.07.2023 on the ground that there was sufficient incriminating materials against the present petitioner in the case diary.

4. The gist of accusation in this case is that the victim/informant lodged an FIR on 31.05.2023, *inter-alia*, alleging that the present petitioner, on 28.05.2023 at about 11.30 PM committed rape on the victim and also threatened to kill her.

5. Learned counsel for the petitioner has submitted that the petitioner is an adult woman aged about 30 years and she has falsely implicated the present petitioner. It is further submitted that in this regard, the petitioner has shown a declaration before the notary on 20.11.2023 whereby she has stated that she lodged the FIR against the present petitioner due to some ill advice given to her by some of her co-villagers and has also stated that no such incident as alleged in the FIR had occurred and therefore, she had refused to undergo medical examination.

6. Mr. K. R. Patgiri, learned counsel for the victim/informant has also stated that the petitioner in fact has shown the declaration which has been annexed along with the bail application as Annexure 3 and the victim/informant

does not have any objection if the present petitioner is allowed to on anticipatory bail.

7. I have considered the submissions made by learned counsel for both sides as well as perused the materials on record including the case diary of Bilasipara P. S. Case No. 213/2023.

8. Though in her statement made under Section 164 as well as Section 161 of the Code of Criminal Procedure, the informant has implicated the present petitioner, however, in view of subsequent developments i.e., the undertaking given by the victim wherein, she has stated that nothing has alleged in the FIR as happened and therefore, she has refused to undergo medical examination test becomes relevant for consideration of the instant bail application.

9. Considering the declaration made by the victim as well as the submissions made by learned counsel for the victim that the victim does not have any objection if the present petitioner is allowed to go on bail, this Court is of the considered opinion that the facts and circumstances of this case does not justify the custodial detention of the present petitioner for the sake of completion of the investigation of Bilasipara P. S. Case No. 213/2023.

10. In view of the above, the present petitioner namely, Ruhul Amin @ Rahul Hussain @ Ruhul is hereby directed to appear before the Investigating Officer of Bilasipara P. S. Case No. 213/2023 within a period of ten working days from the date of this order and cooperate in the investigation. If he does so within the stipulated period of time, in the event of his arrest in connection with Bilasipara P. S. Case No. 213/2023, the above named petitioner shall be allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand) only with one surety of like amount to the satisfaction of the arresting authority, subject to the conditions:-

(i) That the petitioner shall appear before the Investigating Officer and shall cooperate in the investigation;

(ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer or any court.

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

JUDGE

Comparing Assistant