

GAHC010275482023



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

Case No. : Bail Appln./4430/2023

MD ABUL HUSSAIN
S/O ABDUL HUSSAIN
R/O NO. 3 PUB SAMORALI
P.S. MURAJAR
DIST. HOJAI, ASSAM
PIN-782439

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 05.01.2024

Heard Ms. S.K. Nargis, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent.

2. This petition, under Section 439 Cr.P.C. is preferred by the accused,

namely, Md. Abul Hussain, who has been languishing in jail hazot in connection with Murajar P.S. Case No. 65/2008, under Sections 366/34 of the IPC.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Md. Amir Hussain on 09.05.2008. The essence of allegation made in the FIR dated 09.05.2008, is that on 09.05.2008, at around 6 a.m., his sister Smt. X (name withheld) was proceeding towards M.E. Madrassa for attending coaching classes and then the accused namely, Abul Hussain kidnapped her in a vehicle.

4. Upon the aforesaid FIR, the Officer-in-charge of Murajar P.S. registered a case, being Murajar P.S. Case No. 65/2008, under Sections 366/34 of the IPC and carried out the investigation, which culminated in submission of charge-sheet against the accused under Section 366 of the IPC. Thereafter, the learned Court below had framed charge against the accused under Sections 376/366(A) of the IPC. And now the case is pending at the stage of investigation.

5. Ms. S.K. Nargis, the learned counsel for the accused submits that due to absence of the accused before the learned Court below, non-bailable arrest warrant was issued against him for which the accused had preferred one criminal petition, being CrI.Pet. No. 947/2023, and vide order dated 11.09.2023, this Court was pleased to dispose of the aforementioned criminal petition by staying execution of the NBWA issued against the accused and further, directed him to appear before the learned Court below and to apply for regular bail. Accordingly, the accused appeared before the learned Court below on 27.10.2023 and applied for regular bail, but the learned Court below had dismissed the same and remanded the accused back to jail hazot and since 27.10.2023, the accused has been languishing in jail hazot.

6. The learned counsel for the accused further submits that as many as 8

witnesses have been cited in the charge-sheet and out of the 8 witnesses, 5 witnesses have been examined and there remains to examine 3 witnesses, including the I.O. only, and that the accused will appear before the learned Court below on each and every date and he is ready to abide any condition impose by this Court and therefore, it is contended to allow the petition.

7. On the other hand, Mr. R.J. Baruah, learned Addl. Public Prosecutor submits that though during first part of the trial the accused appeared before the learned Court below, yet he defaulted since 2021 and having regard to the conduct of the accused and also the seriousness of the offence, Mr. Baruah has opposed in granting bail to the accused at this stage.

8. 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 scanned copy of the record from the learned Court below.

9. It appears that the case was registered on 09.05.2008, and charge-sheet was submitted on 30.07.2008, and since then, the case is pending before the learned Court below. Further it appears that the conduct of the accused was not satisfactory and that though 8 witnesses have been cited in the charge-sheet, 5 witnesses have already been examined and there remains to examine only 3 witnesses.

10. Having regard to the conduct of the accused, this Court is left unconvinced in the submission of the learned counsel for the accused that the accused will appear before the learned Court below on each and every date.

11. Having regard to the nature and gravity of the offence and the submission of the learned counsel of both sides as well as the conduct of the accused, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused.

12. Accordingly, this bail application stands dismissed.
13. However, the learned Court below is directed to expedite the trial and if necessary, to take recourse to Section 309(1) Cr.P.C. and dispose of the case within earliest possible time, without being influenced by any of the observations made herein above.
14. In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant