

GAHC010278672023



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

Case No. : AB/4156/2023

SANDIPAN CHOUDHURY AND ANR
S/O LATE SWAPAN KUMAR CHOUDHURY
R/O HOUSE NO. 71, GUNAMOYEE ROAD,
TARAPUR, SILCHAR, P.S. SILCHAR
DIST. CACHAR, ASSAM

2: SRI PARTHA DAS
S/O SATRUGHNA DAS
R/O SANKARSAHA
NORSING ROAD
OPPOSITE SILCHAR, RAILWAY STATION
TARAPUR PART-I, SILCHAR
P.S. SILCHAR, DIST. CACHAR, ASSA

VERSUS

THE STATE OF ASSAM ,BEING REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S P CHOUDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 04-01-2024

Heard Mr. K.Biswakarma appearing on behalf of Mr. S. P. Choudhury,
learned counsel for the applicants. Also heard Mr. K. Baishya, learned Addl. P.P.

for the State respondent and Mr. A. B. Dey, learned counsel for the informant.

2. Apprehending arrest in connection with the Silchar P.S. Case No. 2105/2023, under Sections 342/326/376(D) of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, 1. Sandipan Choudhury and 2. Sri Partha Das for grant of pre-arrest bail.

3. The above noted case has been registered on the basis of an FIR lodged by one Smt.'X'(name withheld), on 05.11.2023.

4. The essence of allegations made in the FIR dated 05.11.2023, is that on 4.11.2022, at about 8 PM, she went to the grocery shop, belonging to Sandipan Choudhury @ Sunny to make payment of a sum of Rs.2,000/- and also to purchase some other grocery materials and after receiving a sum of Rs.2,000/-, the brother-in-law of Sunny, namely, Partha Rabi Das, forcefully taken her to a room situated in the backside of his shop and tried to commit rape upon her and as she has resisted, accused Sunny took out a knife and assaulted over her left hand and Partha Rabi Das also pressed her neck causing injury over her neck and snatched away one gold chain, weighing about 1 bori, and thereafter, committed rape upon her one by one.

5. The learned counsel for the applicants submits that the applicants are innocent and no way involved with the offence alleged in the FIR and in support of his submission the learned counsel for applicants has produced one pen drive containing CCTV footage of the shop of the accused Sandipan Choudhury @ Sunny and the said CCTV footage is supported by one certificate issued u/s 65 B of the Evidence Act and the said CCTV footage has negate the presence of informant in the shop of the applicant, at the relevant point of

time. Further, the learned counsel for the applicant submitted that the allegation leveled in the FIR are not at all believable and therefore, it is contended to allow the petition.

6. On the other hand, Mr. Baishya learned Addl. P.P. has produced the case diary before this Court and submits that injury report of the victim is available in the case diary and the injury report indicates that the victim sustained injury over her left hand and also over her neck and the same corroborated her version in the FIR and also in the statement u/s 161 as well as u/s 164 Cr.P.C. and sufficient incriminating materials are collected in the case diary against the applicant and thereafter, Mr. Baishya, has opposed the petition.

7. On the other hand, Mr. Dey, learned counsel for the informant has produced some medical documents alongwith the photographs of the victim woman, in respect of sustaining injury over her left hand and also over her neck, and submits that offences are serious in nature and the applicants are not entitled to get privilege of pre-arrest bail in such a serious cases and therefore, it is contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Baishya, learned Addl. P.P.

9. The case diary indicates that I.O. has collected sufficient incriminating materials in support of the allegation made in the FIR. He has also collected the medical report of the victim and same indicates the injury got by the victim over her left hand and also over her neck. Moreover, she has implicated both the applicants with the offence alleged in the FIR, in both her statements, u/s 161 Cr.P.C. and 164 Cr.P.C. The offences are serious in nature and investigation is going on and having regards to above, this Court is of the view that this is not

a fit case where the privilege of pre-arrest bail can be granted to the accused persons and accordingly, the petition stands dismissed.

10. Case diary be returned.

JUDGE

Comparing Assistant