

GAHC010279502023



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

Case No. : AB/4168/2023

NUR SAMAD @ NUR SAMAD ALI
S/O RABIAL HUSSAIN
R/O BARDIA NAYAPARA
P.S. BOKO
DIST KAMRUP, ASSAM
PH. NO. 9859043615 (M)

VERSUS

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

Advocate for the Petitioner : MR. A ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 04-01-2024

Heard Mr. A. Ali, learned counsel for the accused and also heard Mr. K. Baishya, learned Addl. P.P. for the State respondent.

Apprehending arrest, in connection with Boko P.S. Case No. 525/2023, under Sections 509/448/376 of IPC, added Section 394 IPC, this application under

Section 438 Cr.P.C. is preferred by applicant namely, Nur Samad @ Nur Samad Ali for grant of pre-arrest bail.

The above noted case has been registered on the basis of an FIR lodged by one Smti 'X' (name withheld), on 2.11.2023.

The essence of allegation made in the FIR dated 2.11.2023 is that on 31.10.2023, at about 5 PM in the afternoon, in absence of her husband, accused Noor Samad Ali entered into her room and grabbed her and committed rape upon her and when she raised hue and cry, then her family members apprehended the accused and handed him over at the police station.

The learned counsel for the applicant submits that the applicant is innocent and no way involved with the offence alleged in the FIR and in fact, the FIR lodged by the informant is the counter blast of the FIR lodged by one Rabial Hussain, who is the father of the present applicant on 31.10.2023, and he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

On the other hand, Mr. Baishya, learned Addl. P.P., by producing the case diary before the Court, submits that there are materials against the applicant and therefore, Mr. Baishya has opposed the petition.

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

In view of the materials collected so far in the case diary, specially, the statement of the victim woman, recorded u/s 161 Cr.P.C as well as 164 Cr.P.C. and also considering the statement of other witnesses, this Court is of the view that a prima facie case is made out for granting the privilege of pre-arrest bail to the applicant.

And accordingly, it is provided that in the event of arrest of the applicant, in connection with Boko P.S. Case No. 525/2023, under Sections 509/448/376 of IPC, added Section 394 IPC, he shall be released on pre arrest bail on his executing a bond of Rs. 50,000/-, with one surety of like amount to the satisfaction of the arresting authority.

The above privilege is, however, subject to the following conditions:

1. That the applicant shall make himself available for interrogation by the Investigating Officer as and when required;
2. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
3. That the applicant shall not leave the jurisdiction of the learned Judicial Magistrate, Ist Class, Boko without prior permission.

In terms of above, this A.B stands disposed of .

JUDGE

Comparing Assistant