

Case No :BA 0000075/2015

Party Name : MD. IDDISH MIOAH ON BEHALF OF ACCD.MD. ASHAR MIAH & ANR Vs
THE STATE OF TRIPURA

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This application for grant of bail has been filed by the petitioner, Md. Iddis Miah on behalf of the accused persons namely, Md. Ashar Miah and Jakir Miah in respect of FIR No. 133 of 2014 lodged with West Agartala Women Police Station against the accused persons and one other person namely, Ismail Miah registered under Section 376(D)/324/307/34 of the Indian Penal Code and Section 20(a)(i) of the Arms Act.

This FIR has been lodged as an outcome of an order passed by the Court since the victim prosecutrix initially filed a complaint to the police. In view of the arguments made by Mr. Ghosh it would be pertinent to refer the certain portions of the complaint. According to the victim, her husband used to reside as a tenant in the house of one, Iddis Miah. Her husband disappeared and thereafter she and her daughter continue to reside in the said house of Iddis Miah. According to the complainant, Md. Ashar Miah, accused No.1 herein who is the son of Iddis Miah fell in love with the complainant and proposed that they should get married. She, however, refused. Thereafter, on 30th June, 2014 Ashar Miah forcibly entered the room of the victim after threatening her with a pistol. It was about 11.00 p.m and the minor daughter was sleeping and Ashar Miah taking advantage of her loneliness raped the prosecutrix 2/3 times. This was repeated on many occasions. Thereafter, on 10.07.2014 the other two accused persons, namely, Ismail Miah and Jakir Miah detained the complainant forcefully in her room and raped her against her will by threatening to murder her. She was again raped under the threat of a pistol. On 01.08.2014 all the three accused entered the room and again raped her 2/3 times. She also heard the accused discussing amongst themselves that they would send the victim to Bangladesh. The victim thereafter escaped from the house along with her minor daughter. Some people were keeping watch on her but she somehow managed to escape. When the complainant went to the police station she noticed that the accused persons were standing at the police station and therefore, out of fear she did not lodge the complaint and therefore, came to the Court to lodge the complaint.

The complaint has been lodged in Court on 22nd August, 2014 and there is no explanation as to what the complaint was doing from 01.08.2014 to 22.08.2014. The complainant was medically examined after the police lodged the FIR on the basis of the orders of the CJM. This medical examination is meaningless, one way of the other, because it has taken place much after the alleged occurrence of rape. The victim is a married woman and, therefore, such medical examination would be of no help to either side.

Normally, in a case of rape this Court would be reluctant to grant bail especially when the case is of an alleged gang rape. However, there are certain distinguishing features of this case. According to the allegations made in the complaint, the complainant was first raped on 30th June, 2014 by Ashar Miah. Thereafter he continued to rape her on a number of occasions. She was then raped on 10.07.2014 by the other two accused, Ismail Miah and Jakir Miah. Thereafter, on 1st August, 2014 she was raped by all the three accused. There is no explanation why she never lodged the complaint after 30th June, 2014 or after 10th July, 2014. True, it is that conviction in a rape case can be based totally on the oral testimony of the victim but an important caveat is that the statement of the victim should inspire confidence.

This Court at this stage is not going into the merits of the case but the statement of the victim has to be tested in the light of the allegations made by her and her subsequent statement recorded by the Magistrate under Section 164 Cr. P.C.

In the statement made to the Magistrate she has given a different version. For the first time she says that she did not agree to marry Ashar Miah because she was a Hindu and he was a Muslim. According to her, when she refused the proposal of marriage on that very day, Ashar Miah and his two friends, Ismail Miah and Jakir Miah entered into her room at 11.00 pm and forcibly raped her and left her house. This is totally contradictory to the version given in the complaint that first time she was raped only by Ashar Miah and then he continued to rape on a number of occasions. Thereafter there was a second major incident when only Ismail Miah and Jakir Miah raped her and lastly, on 1st August, 2014 there was an incident when all three raped her.

Furthermore, in the statement made to the Magistrate the victim has stated that thereafter she left the house of Iddis Miah and took up another house at Math Chowmuhani on rent. She also stated that thereafter he (probably Ashar Miah) went to foreign country and returned after three months. Neither the fact of taking a house on rent nor the factum of Ashar Miah going abroad is mentioned in the original complaint. She also stated that then she left the house at Math Chowmuhani and went to Nandannagar, but before shifted to Nandannagar she spent one night in the house of Iddis Miah when she was again raped by the accused persons. It is unbelievable that a woman who has been raped in a house and who has shifted to a rented accommodation would of her own accord shift back to that very house in which she was raped.

Therefore, at this stage, though this Court is not going into the merits of the case, prima facie, it appears to me that the chance of the case being a false case is not a remote chance. The accused persons have been behind bars for about one month. Investigation is complete and charge sheet has been filed. Only the evidence of the prosecutrix is most relevant and she cannot be threatened by the accused persons.

Keeping in view the aforesaid observations, the bail application is allowed and the accused persons namely, Md. Ashar Miah and Jakir Miah are ordered to be released on bail on their furnishing bail bond in the sum of Rs.20,000/- (rupees twenty thousand) each with two sureties in the like amount to the satisfaction of the learned Trial Court undertaking therein:-

- (i) That, the accused persons are directed not to tamper with or in any manner influence the prosecution witnesses;
- (ii) That, the accused persons shall ensure that no threat directly or indirectly is given to any of the prosecution witnesses;
- (iii) The accused persons are further directed not to cause any hindrance in the investigation;
- (iv) The accused persons shall not leave Tripura without permission of the appropriate Court;
- (v) The accused persons shall appear before the trial Court on each and every date of hearing. In case, they absent themselves on any date, then the trial Court shall cancel the bail and the accused persons shall be arrested. Thereafter, the petitioner-accused shall have to approach this Court for grant of bail;
- (vi) The accused persons are directed not to in any manner try to get in touch with the prosecutrix and her daughter and in case they even try to get in touch with them telephonically or otherwise and if they violate any of the aforesaid conditions or tries to delay the trial then the prosecution shall be entitled to approach this Court for cancellation of the bail.

It is made clear that the observation made hereinabove have been made only for the purpose of deciding the bail application and shall not be taken into consideration while deciding the case of the accused persons by the trial Court.

With these observations, the bail application is disposed of.

On the petitioner filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner by tomorrow.