GAHC010160622020

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

**Case No. : AB/3219/2020**

UMANANDA DARIG
S/O. SRI BANESWAR DARIG, R/O. TAXI ALI, MOTHADONG, CHOULKORA
UNDER SIVASAGAR POLICE STATION, DIST. SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

**Advocate for the Petitioner** : MR D TALUKDAR

**Advocate for the Respondent** : PP, ASSAM

**BEFORE**
**HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO**

**ORDER**

27.11.2020:

Heard Mr. D. Talukdar, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned PP, State of Assam.

This is an application under Section 438 of Cr.P.C. praying for granting of pre-arrest bail to the petitioner who is apprehending arrest in connection with Teok P.S. Case No.562/2020, registered under sections 120B/417/376(1) of IPC.

On 24.08.2020, one Rimjim Pegu submitted a complaint to the Superintendent of Police, Jorhat stating that after having been in love with one another for about 4

years she and the petitioner decided to get married and as such, signed an agreement on 06.04.2017 which was notorised by a Notary Public, Jorhat. Thereafter, they lived together as husband and wife in her house and decided a date for marriage before the Marriage Officer of the District. But on the date agreed upon, the petitioner did not turn up for the marriage. Since the marriage did not take place, she is mentally suffering.

On receipt of the above complaint, the Officer-in-charge, Teok Police Station registered the FIR under Sections 120B/417/376(1) of IPC.

Being apprehended that he may be arrested, the petitioner has filed the instant petition before this Court praying for anticipatory bail.

Learned counsel for the petitioner submits that the offences charged against the petitioner are all bailable except Section 376(1) of IPC but the same is not attracted under the facts and circumstances of the case. Elaborating his submission, learned counsel for the petitioner submits that as per the complaint submitted by the complainant in the FIR, the petitioner and the complainant were in love and had lived together as husband and wife. Therefore, the offence punishable under Section 376 (1) of IPC is not attracted.

Learned Additional Public Prosecutor, on perusal of the case diary, submits that the petitioner and the victim girl appeared to have been in love relation and following their agreement to get married, they have lived together as husband and wife though the actual marriage did not take place. Learned Additional Public Prosecutor placed the case diary before the Court and the case diary contains the agreement for marriage signed by the petitioner and the victim, and the statement of the complainant recorded under Section 164 of Cr.P.C. The statement of the complainant being recorded in vernacular, the learned Additional Public Prosecutor has verbally translated the same for my understanding.

The marriage agreement and the statement of the complainant recorded under Section 164 Cr.P.C. all goes to show that the relationship between the complainant and the petitioner was consensual. The only thing that did not materialize was the actual

marriage. Under such facts and circumstances-prima-facie, it does not appear to me that the offence under Section 376 (1) of IPC was committed by the petitioner specially, because, the complainant is an adult and all that happened between them was under love and affection for one another. In that view of the matter, I am of the opinion that the petitioner should be granted anticipatory bail. Accordingly, the investigating authority is directed to release the accused/petitioner if and when he is arrested provided, he furnishes a PR bond of Rs.50,000/- with a surety bond of the like amount to the satisfaction of the arresting authority. During investigation and trail of the case, he should not leave station without permission of the I.O. or the trial court. He should also not indulge in doing anything that would hamper the investigation or trial of the case and which will hamper or temper with the evidence of the case.

The petition is disposed of accordingly.

**JUDGE**

**Comparing Assistant**