GAHC010161822020

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

Case No. : AB/3254/2020

ELAHI ISLAM @ ELAHI ALI
S/O MEHER ALI, R/O VILL-SILGHAGARI, P.S.-MANIKPUR, DIST-BONGAIGAON, ASSAM, PIN-783392

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 10-12-2020

Heard Mr. SC Biswas, learned counsel appearing for the petitioner and Ms.SH Borah, learned Additional Public Prosecutor, Assam appearing for the State respondent.

By this petition under Section 438 Cr.P.C., the petitioner, namely, **Elahi Islam @ Elahi Ali** has prayed for pre-arrest bail apprehending arrest in connection with **Manikpur P.S. Case No. 256/2020** under Section 376 of the IPC.

Case diary, as called for, is received.

Mr. SC Biswas, learned counsel appearing for the accused petitioner, submits that the

informant's family has long standing boundary dispute with the petitioner's family and therefore, false accusation has been brought against the petitioner.

Ms. SH Borah, learned Addl.P.P. Assam submits that both the petitioner and the victim, who is married, are major and the incident came to light when the latter's husband witnessed the incident.

The FIR reveals the allegation that the petitioner committed rape of the informant victim woman, on 15.07.2020 at about 12 noon, at the jute plantation area gagging her mouth. Her husband witnessed the incident and thereupon he fled away from the place of occurrence.

On scrutiny of the case diary including the statement of the victim woman, recorded u/s 164 Cr.P.C., it appears that the victim is a major woman and the petitioner is a neighbour. On consideration of the evidence, so far collected by the I.O., this Court finds that the entire incident was consensual subject, of course, to the final outcome in the investigation and as such, the custodial interrogation of the petitioner may not be required.

Accordingly, it is provided that in the event of arrest of the petitioner, named above, he shall be released on pre-arrest bail, on furnishing bail bond of **Rs.25,000/-** with one surety of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:

(i) That the petitioner shall appear before the Investigating Officer within 10 days;

(ii) That the petitioner shall not hamper or tamper with the investigation in any manner; and

(iii) That the petitioner 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/her from disclosing such facts to the Court or to any police officer.

Return the case diary.

The anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant