GAHC010177782020

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

Case No. : AB/3567/2020

SOHAN LAL SANDHU @ SOHAN LAL
S/O LATE KASTURI LAL, R/O VILL-SHIV NAGAR, P.O. AND P.S.-MIRAN SAHIB, DIST-JAMMU, PRESENTLY POSTED AT 200 BATTALION CRPF, JAFFARPURKALAN, P.O.-UJWA, DIST-SOUTH WEST NEW DELHI-110073

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

ORDER

15.12.2020

Heard the learned counsel for the petitioner and also the learned counsel for the State.

2. On earlier occasion, the petitioner came before this Court seeking pre-arrest bail in connection with Garamur PS Case No. 51/2020, registered under Sections 493/376/509 IPC, vide AB No. 2438/2020. This Court, on 24.09.2020, considering that the informant is a major girl, having physical relation with the petitioner out of love and affection grown between them, but subsequently, the accused person refused to marry her etc., granted interim bail to the accused petitioner, called for the

case diary in the meantime. On the next very day, i.e., on 11.11.2020, as it was submitted by the learned Additional Public Prosecutor that the case has been charge sheeted, the petition was disposed of with a direction to the petitioner to move the bail application before the trial Court within a period of one month.

3. Now, the present petitioner is again before this Court placing his prayer for pre-arrest bail on the ground that the charge sheet has been filed against him under Sections 493/376/509 IPC, read with Section 6 of the POCSO Act, which is not maintainable to him and he has, however, apprehension that he will be taken into custody by rejecting his bail prayer, by the Court of Magistrate. Having regard to the submissions made and the documents annexed, this Court has also given conscious consideration to the submissions made before this Court that the addition of Section 6 of the POCSO Act will not come into play, when the victim is a major girl of 25 years, as per the FIR itself.

4. It is also noted that the prime grievance raised by the informant as narrated in the FIR that the petitioner cheatedher after having sexual intercourse with her, in the guise of love, he promised to marry her, but subsequently he refused to do so and also circulated certain obscene photos and about their relation.

5. Considering as a whole, the entire story depicted in the FIR, it appears that there is no allegation as such by the informant that such physical relation was established against her will or her consent was given under coercion. Such voluntary physical relation was held between the parties since 2017 to 2020 and the FIR was filed on 22.07.2020, by the victim herself. She has raised the grievance against circulating of obscene photos and not marrying her after such physical relation.

6. Facts to be noted herein that although there is co-habition on the pretext of marriage, but the IO has registered the case under Section 493 IPC and although there is no allegation of rape within the purview of law, the case has been registered under Section 376 IPC and addition of Section 6 of the POCSO Act, is also not in conformity with the law, whereas, POCSO Act relates to the offence committed to a minor, but in the instant case, the victim/informant is a major. Apparently, the gravity of the offence is not reflected under the aforesaid serious Sections of law. The learned counsel for the petitioner has placed reliance on the decision rendered in the case of *Bharat Chaudhary & Another –Vs- State of Bihar & Another;* (2003) 8 SCC 77, wherein, it has been held that the object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation.

7. Coming to the present case at hand, it is found from the factum of the case that has been projected in the charge sheet is not made out, whereas, the allegation of cheating may be a criteria applicable in the present circumstances. Obviously, we cannot ignore the apprehension of the petitioner that he may be taken to custody while entering appearance before the Court below, in view of the offence alleged.

8. In the circumstances, in order to prevent the unnecessary harassment to the petitioner, who is a CRPF personnel working as Constable (General Duty) at HQ. 200 Battalion, Delhi, it would be suffice if his interim bail is made absolute by exercising the judicial discretion that has been vested upon this Court to deliver justice.

9. Taking note of all above and in the given circumstances, this Court is inclined to allow the privilege of pre-arrest bail to the petitioner. Accordingly, it is directed that the interim bail granted earlier to the petitioner in connection with Garamur PS Case No. 51/2020, is hereby made absolute, which would prevail till the disposal of the matter in the trial.

10. Anticipatory Bail Application stands disposed of.

11. Let the present matter be not taken as a precedent in other cases.

JUDGE

Comparing Assistant