

19.01.2021
SL No.36
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**CRM 78 of 2021
(Through Video Conference)**

**Girendra Nath Roy @ Girendra Roy. ... Petitioner.
Vs.**

The State of West Bengal... .. Respondent.

Mr. Sudip Guha.

.. Advocate for the Petitioner present in Court.

M/s Aditi Shankar Chakraborty, Ld APP

Sagnik Sankar Sikdar

..Advocates for the State present in Court.

Present application has been filed for grant of pre-arrest bail in Dinhata Police Station Case No.971 of 2016 dated 31st October, 2017 registered under Sections 376/511 of the Indian Penal Code.

Learned counsel appearing for the petitioner submitted that on 31st October, 2016 at about 7 p.m. one Sanjay Barman, Basanta Barman, Shyamal Barman, Prasenjit Barman and Laltu Barman forcibly entered in the house of the petitioner and used filthy language. When the wife of the petitioner namely, Joytsna Roy raised objection, she was assaulted and molested. Hearing hue and cry of Joytsna Roy, the petitioner tried to rescue her. He was also assaulted. Their household goods were destroyed. Cash amounting to ₹10,000/- along with a gold chain were taken from the Almirah. After the petitioner and his wife raised voice the accused persons fled away from the spot.

On November 1, 2016, Joytsna Roy filed a complaint with the police. No action was taken thereon.

With the view to harass the petitioner one Maloti Barman wife of Sanjoy Barman, who was one of the persons who had entered forcibly in the house of the petitioner, filed a complaint with Dinhata Police Station on October 31, 2016 under Sections 376/511 of the Indian Penal Code. The allegations in the complaint are that on October, 31, 2016 when the complainant namely, Malati Barman was returning her home on bycycle the petitioner had forcibly confined her. Indecent proposal was made to which she refused. There was scuffle between the parties. The petitioner even tried to outrage her modesty. When she shouted the people gathered at the spot and the petitioner ran away.

The argument raised is that the complaint in question is counterblast to the incident in which the husband of the complainant and other persons had trespassed into their house.

No action was taken by the police on the aforesaid complaint for a period of about three years before the charge-sheet was filed in Court on September, 30, 2019. The petitioner who has small business in the village and is staying regularly at his home in the village and carrying on his day to day activities. The police never sought to arrest him. After the charge sheet was filed in Court the police started raiding his house for arrest.

The allegations in the complaint made to the police are totally false as no such incident had taken place. It further referred to the

charge-sheet filed in Court in which it has been specifically stated that the complainant had refused her medical examination.

On the other hand, learned counsel for the respondent submitted that several efforts were made to arrest the petitioner but the police did not succeed. The allegations against the petitioner are serious. He does not deserve the concession of pre-arrest bail.

Heard learned counsels for the parties and perused the paper book as well as copy of the case diary produced in Court.

A perusal of the case diary shows that except the statement of the complainant and her neighbour, which are identical in nature there is no other material on record to substantiate the case made out as alleged in the FIR. There is statement of the complainant on record to state that she does not want her medical examination.

A perusal of the case diary, further shows that periodical entries have been made to arrest the accused but he was shown to be absconding. It was further submitted that about three years after the registration of the case charge-sheet dated September 30, 2019 was filed in Court.

As far as the prayer of the petitioner is concerned, there is no medical evidence on record to suggest any injury on account of alleged scuffle between the parties to establish allegations made under Section 376 of IPC. The petitioner claims that he has been carrying on his day to day business in his village and was never arrested. The complaint was kept pending for investigation for a period of three years and finally charge-sheet dated September 30, 2019 was filed in Court.

At this stage, in our opinion, considering the material on record the petitioner is not required to be taken into custody, as the material annexed by the investigating agency along with charge sheet does not raise any finger against the petitioner to substantiate the allegations made in the FIR, hence, we find that the case is made out for grant of pre-arrest bail.

As the charge-sheet has already been filed in the Court the petitioner shall appear before the Court within a period of 15 days from today and on appearance the learned Court shall admit him to bail on the conditions as deem fit.

We are constrained to make observation regarding the kind of investigation made in the present case involving serious offence under Section 376 of IPC. The investigating officer is apparently not aware of the position of law and a half-baked charge-sheet has been filed in Court without any supporting material. His conduct requires to be examined, to find out whether he is fit to remain in police service or entrusted with investigation of serious offences. A copy of the order is sent to the Director General of Police, State of West Bengal for taking appropriate action in the matter. The compliance report will be filed in Court within six months from the date of service of this order.

The application for pre arrest bail is disposed of, accordingly.

(RAJESH BINDAL, J.)

(SAUGATA BHATTACHARYYA, J.)