

GAHC010228152022



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

Case No. : AB/3314/2022

JONTI HUSSAIN
S/O- KAMAL HUSSAIN, R/O- VILL- BHITOR SUTI GAON, P.O.
KOLIABHUMURA, P.S. TEZPUR, DIST.- SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM

Advocate for the Petitioner : MR. K BORUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

22.11.2022.

Heard Mr. K. Boruah, learned counsel for the accused/applicant. Also heard Mr. RJ Baruah, learned Additional Public Prosecutor, Assam for the State respondent.

Apprehending arrest in connection with Tezpur P. S. Case No.1099/2022, under Section 507 of the Indian Penal Code, read with Section 67 (A) of the Information Technology Act, 2000, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicants, namely, Sri Jonti Hussain for grant of pre-arrest bail.

The aforementioned case has been registered on the basis of one FIR lodged by one Smti 'X' name withheld on 18.10.2022, to the effect that one Jonti Hussain used to send message to her in whats app using obscene words and language.

Mr. K. Boruah, learned counsel for the applicant submits that the offence under section 507 IPC is bailable and offence under section 67 (A) of the IT Act is not attracted here in this case as from the perusal of FIR, it cannot be said that the applicant has used sexually explicit language or sent sexually explicit materials to the informant.

On the other hand, Mr. RJ Barua, learned Additional Public Prosecutor, Assam has produced the case diary before this Court and submits that the case is registered under Section 507 IPC and section 67 (A) of the IT Act and the offence under Section 507 IPC is a bailable offence and the first offence under section 67 (A) of the IT Act is bailable and from the case diary, it cannot be ascertained as to whether it is the first offence or second offence of the applicant, under the I.T. Act. However, Mr. Baruah, learned Additional Public Prosecutor affirmed that the applicant appeared before the I.O., pursuant to the order of this Court dated 11.11.2022 and his custodial interrogation is not required, in the interest of investigation.

Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and

also perused the Case Diary produced before this Court with the assistance of Mr. Barua, learned Additional Public Prosecutor and I find force in the submission of Mr. Barua.

It appears that both the offence under Section 507 of the IPC as well as the offence under section 67 (A) of the IT Act are bailable and from the case diary, it cannot be ascertained whether it is the first offence or second offence. Further it appears that the applicant has appeared before the I.O., in pursuant to the order of this Court dated 11.11.2022 and his custodial interrogation is not required, in the interest of investigation and therefore, this Court is inclined to make the interim order, dated 11.11.2022, absolute in the same terms and conditions.

In terms of above, this anticipatory bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant