

Gita Kaibbartha vs The State Of Assam on 18 August, 2022

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Bench: Kalyan Rai Surana

Page No.# 1/4

GAHC010156922022

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

Case No. : AB/2228/2022

GITA KAIBARTHA
W/O LATE PRADIP KAIBORTH
R/O SANTIPUR
NEAR GOENKA NURSING HOME,
P.S. BHARALUMUKH
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18.08.2022 Heard Mr. B. Chowdhury, learned counsel for the petitioner and Mr. Bhaskar Sarma, learned APP appearing for the State.

By this application under Section 438 Cr.P.C., the petitioner is seeking pre-

Page No.# 2/4 arrest bail, apprehending arrest in connection Bhangagarh PS Case No. 216/2022 under Sections 366(A)/370(A)/34 IPC.

The learned APP has produced the case diary and has opposed the prayer for bail.

The learned counsel for the petitioner has referred to the provision of Section 5 of the Code of Criminal Procedure (Assam Amendment) Act, 1983, which had received the assent of the President on 19.01.1984 and published in the Assam Gazette Extraordinary No. 28 dated 08.02.1984 under notification no. LGL.58/83/79 and has submitted that by virtue of Section 5 thereof Section 439- A was inserted, which is as follows:

"5. After Section 439 of the Code, the following shall be inserted, as a new Section 439-A namely:-

439A. (1) Notwithstanding anything contained in this Code, no person-

(a) who, being accused or suspected of committing an offence under any of the following Sections, namely, Sections 120B, 121, 121A122, 124A, 153A, 302, 303, 304, 307, 326, 333, 364, 365, 367, 368, 392, 394, 395, 396, 399, 412, 431, 436, 449 and 450 of the Indian Penal Code, 1860 Section 3, 4, 5 and 6 of the Indian Explosive Substances Act, 1908 and the Arms Act, 1959 is arrested or appears or is brought before a Court: or

(b) who, having any reason to believe that he may be arrested on an accusation of committing an offence as specified in clause (a) has applied to the High Court or Court of Session for a direction for his release on bail in the event of his arrest, shall be released on bail, or as the case may be, directed to be released on bail, except on one or more of the following grounds, namely-

(i) that the Court including the High Court or the Court of Session for reasons to be recorded in writing is satisfied that there are reasonable grounds for believing that Page No.# 3/4 such person is not guilty of any offence specified in clause (a);

(ii) that such person is under the age of sixteen years or a woman or a sick or an infirm person;

(iii) that the court including High Court or the court of Session, for reasons to be recorded in writing is satisfied that there are exceptional and sufficient grounds to release or direct the release of the accused on bail."

It is also submitted that as the petitioner is a woman aged 43 years, she is entitled to bail under ground (ii) of Section 439-A (b) CrPC. The said provision is quoted below:

(ii) that such person is under the age of sixteen years or a women or a sick or an infirm person;

It is submitted that the petitioner is accused of conniving with his daughter, namely, Bijita Das, who was arrested by the police in the instant case. It is submitted that the only mistake of the petitioner is that she had kept the victim lady whose child was being lifted to stay in the night at their house and thereafter, taken to the GMCH.

It is also submitted that that in the present case in hand, the petitioner was not caught red handed while lifting a new born baby, but it is merely apprehended that the petitioner might be in the child lifting racket in connection with Bhangagarh PS Case No. 120/2022, which is not at all a ground to detain the petitioner. It is submitted that on the strength of FIR no case has been made out under Section 370-A IPC and moreover, the provisions of Section 366- A IPC is bailable. Hence, it is submitted that the interim pre-arrest bail be granted to the petitioner.

On a perusal of the case diary, it appears that the daughter of the petitioner is allegedly caught red handed by the security staff of GMCH in the Page No.# 4/4 process of lifting a new born baby and that the police strongly suspect that the petitioner is also involved in a previous case, being Bhangagarh PS Case No. 120/2022, which was lodged on 13.04.2022 and the new born child kidnapped in that case has not been recovered till date.

Having regard to the fact that the case diary contains sufficient materials against the petitioner that her daughter had been caught red handed in course of lifting a new born baby, notwithstanding that the petitioner is a lady, this is not a fit case to enlarge the petitioner on bail at this state.

Accordingly, this application for bail is rejected. Return the case diary.

JUDGE Comparing Assistant