

GAHC010055872024



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

Case No. : AB/707/2024

CHANBAR ALI @ SANBAR ALI
S/O INTAJ ALI, R/O VILL- BHANGNAMARI, P.S.-MUKALMUA, DIST-
NALBARI, ASSAM, PIN-781126

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

28.03.2024

Heard Mr. K. Kalita, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned APP for the State respondent.

2. This is an application under Section 438 CrPC for granting anticipatory bail to

the petitioner i.e. Chanbar Ali @ Sanbar Ali, who is apprehending his arrest in connection with Sialmari PS Case No. 01/2024 under Section 376(1) of the IPC r/w Section 67/67A of IT Act.

3. The case of the prosecution in brief is that on 21.12.2023, one Tohiron Begum lodged an FIR before the Sialmari PS alleging interalia that on 25.11.2023 at around 2 pm, the accused petitioner came to the house of the informant and by taking advantage of the informant being alone, clicked some objectionable photos from his mobile phone by putting his hand around the neck of the informant and thereafter threatened the informant to kill her if she informs the same to her husband or others. It was further alleged that on 20.12.2023, in absence of the informant's husband, the accused petitioner again came to her house in the evening and forcefully raped her. Accordingly, the case was registered.

4. Mr. K. Kalita, learned counsel for the petitioner submits that the actual facts of the matter is that the said FIR dated 21.12.2023 has been lodged by the Informant with ulterior motive to harass the Petitioner by misusing the law. He further submits that there are some old rivalry between the family members of the accused Petitioner and the informant's Family, which had been started on 22.09.2021, when the brother of the present Petitioner lodged an FIR before the Sialmari Police Station inter-alia stating that on 19.09.2021 at around 11 AM, his younger brother i.e., the present Petitioner while going to the house of Hasen Ali, a resident of 2 No. Barbala Village by carrying an amount of Rs. 45,000/- in his pocket for some business purpose, the FIR named accused persons including Tohiron Begum and her Husband Joser Ali with preplanned manner, had attacked the Petitioner with sharp weapons and lathis and thereby looted away the said Rs. 45,000/- from his pocket by causing grievous injuries to the present Petitioner. The Petitioner although was admitted in the Mukalmua Medical but later on he was referred to Gauhati Medical College & Hospital.

5. He further submits that on receipt of the said FIR, the Officer-in-Charge of

Sialmari, Police Station has registered a case vide Sialmari P.S. Case No. 40/2021 U/S 341/379/325/506/34 of IPC and started investigation the matter, which is still pending in evidence stage.

6. He further submits that thereafter, the Informant Tohiron Begum and her Husband Joser Ali had committed another offence of forcefully marrying their minor daughter with the accused No.1 on 12.01.2022. He further submits that child marriage is a social evil and the Petitioner being a social activist, had lodged the FIR dated 05.10.2023 before the Sialmari PS inter-alia stating that at around 12:30 AM midnight of 12.01.2022, the Accused No. 3 Joser Ali, at his own house with the help of the accused No. 2 Barek Ali and Accused No. 4 Tohiron Begum secretly solemnized marriage of the minor daughter of the Accused No. 3 namely Jesmina Begum, aged about 15 years with the Accused No. 1.

7. He further submits that on receipt of the said FIR, the Officer-in-charge of Sialmari, Police Station has registered a case vide Sialmari P.S. Case No. 43/2023 U/S 9/10/11 of Prohibition of Child Marriage Act, 2006 read with Section 6/17 of POCSO Act and started Investigation into the matter.

8. He further submits that pursuant thereto the said Joser Ali, i.e., Husband of the Informant Tohiron Begum had started conspiracy against the Petitioner and his family members to take revenge for lodging the FIR's dated 22.09.2021 and 05.10.2023 and accordingly at his instigation, one Rabichan Ali had committed rape on one Ambeya Khatun, wife of Rupsan Ali who is the brother of the present Petitioner, wherein the said Joser Ali had taken photo of the entire incident and thereafter showed it to several persons.

9. He further submits that an FIR was lodged before the Sialmari PS on 03.12.2023 inter-alia stating that on 01.12.23 at around 4:30 PM while the informant went towards the east side of her house to bring her goat, the said Accused No. 1 Rabichan Ali forcibly dragged her to his house and wanted to have physical relation with the

informant. When the informant resisted, then the Accused No. 1 hit her on her back by an iron rod and forcibly did sexual intercourse with the informant by showing fear of sharp weapons. Thereafter, the Accused No.2 Joser Ali threw the informant out of the house by clicking photos and later on showed the photos to other persons.

10. He further submits that on receipt of the said FIR, the Officer-in-Charge of Sialmari, Police Station has registered a case vide Sialmari P.S. Case No. 54/2023 U/S 376 (1) of IPC and started Investigation into the matter.

11. He further submits that the named accused No. 2 in the said FIR is the husband of Tohiron Begum who is the informant in the Sialmari PS case No. 01/2024 for which the petitioner is praying before this Hon'ble Court for pre-arrest bail.

12. Mr. D.P. Goswami, learned APP for the State respondent on the other hand strongly opposes the prayer for bail. He submits that the informant's statement under Section 164 CrPC has been recorded wherein the informant has clearly implicated the accused petitioner for the offence alleged.

13. I have heard the submissions made at the bar and I have perused the materials available on record.

14. It appears from the materials available on record that the investigation has substantially progressed and the statement of the witnesses has been recorded. It further appears that the victim's statement has been recorded under Section 164 of CrPC. It further appears that prior to the lodging of the present FIR, the petitioner and also the petitioner's family members have lodged FIR against the informant and her husband.

15. Considering the facts and circumstances of the case, it appears that custodial interrogation of the petitioner may not be justified for the ongoing investigation.

16. Accordingly, it is provided that in the event of his arrest, the petitioner named above, shall be released on pre-arrest bail in connection with the above noted case,

on furnishing bail bond of Rs. 15,000/- 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, failing which on and from the 11th day, the interim-pre arrest bail order shall have no force;

ii) 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 from disclosing such facts to the Court or to any Police Officer; and

iii) That the petitioner shall refrain from committing any similar offences in future of which he is accused or suspected of commission.

With the above observations and directions, the Anticipatory Bail application stands disposed of.

JUDGE

Comparing Assistant