

GAHC010085712020



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

Case No. : AB 1523/2020

1:MAIBUR RAHMAN MAZUMDER @ MAHBUR RAHMAN
S/O. LT. ATABUR RAHMAN MAZUMDER @ AFAN ALI MAZUMDER, R/O.
VILL. BIDROHIPAR, P.S. KACHUDARAM, DIST. CACHAR, ASSAM.

VERSUS

1:THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 30-07-2020

Heard Ms. R Choudhury, learned counsel for the petitioner, namely, Maibur Rahman Mazumder @ Mahbur Rahman, who has filed this anticipatory bail application under Section 438 CrPC for grant of pre-arrest bail in connection with Kachudaram PS Case No.14/2020 under Sections 376/34 IPC.

At the outset, Ms. Choudhury, learned counsel for the petitioner submitted that on an earlier occasion, this Court after perusal of the Case Diary had rejected the bail application, being AB No.1125/2020 vide order dated 29.05.2020 of the petitioner along with one Mahmud Hussain Barbhuiya @ Mahmud Alom Barbhuiya, who has also independently filed

another bail application, being AB No.1632/2020 under Section 438 CrPC which is also taken up for disposal today.

The learned counsel for the petitioner has drawn the attention of this Court to a number of Ejahars lodged amongst the parties to establish the fact that there is a long pending dispute and the present allegation is absolutely false which has been made only to harass the petitioner. Additionally, it has been contended that while rejecting the bail application on the earlier occasion, the medical reports were not perused.

Pursuant to the order of this Court, Ms. SH Bora, learned Addl. Public Prosecutor, Assam has produced the Case Diary, including the medical report and the statements made by the victim lady as well as her daughter under Section 164 CrPC.

It is a fact that the medical report does not indicate any recent sexual intercourse. However, the said opinion has to be read along with the observation wherein it has been stated that after the occurrence, the victim had taken bath and changed cloths. The fact that the victim is a married lady aged about 30 years with 6 children is also relevant factor in determining the presence of any injury. That apart, this Court while rejecting the bail application on the earlier occasion after perusal of the Case Diary, had taken into consideration the statements made by the victim as well as her minor daughter under Section 164. *Prima facie*, it appears from such statement that the petitioner herein has not been able to make out a case for grant of pre-arrest bail.

Accordingly and in view of the above, the bail application stands rejected.

Return the Case Diary to the learned Addl. Public Prosecutor, Assam.

JUDGE

Comparing Assistant