

GAHC010177582022



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

**Case No. : AB/2567/2022**

NIRANJAN SHIL (ROY) @ NIRANJAN ROY  
S/O LATE JUGAL KRISHNA SHIL  
R/O DEPARPAR, BDARPUR  
P.S. BADARPUR, DIST. KARIMGANJ, ASSAM, PIN- 788806

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. A GANGULY**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HON'BLE MRS. JUSTICE MALASRI NANDI  
ORDER**

**30.09.2022**

Heard Mr A Ganguly, learned counsel for the petitioner and Ms S H Bora, learned Additional Public Prosecutor for the State of Assam.

Case Diary is received.

This is an application filed under Section 438 CrPC, seeking pre-arrest bail of the petitioner, namely, Sri Niranjan Shil (Roy) @ Niranjan Roy, who is apprehending arrest

in connection with Badarpur PS Case No. 190/2022, under Sections 376/120(B)/307/325/354/34 IPC.

It is submitted by the learned counsel for the petitioner that the informant had love affair with the present petitioner and she had indulged the petitioner to have sexual act with her. The allegation made by the informant is totally false and concocted. Hence, bail may be granted to the present petitioner.

On the other hand, learned Additional Public Prosecutor has submitted that on perusal of the Case Diary, it is revealed that the victim was a consenting party to have sexual act with the petitioner. As the victim is a married person and the medical report also does not support the allegations made against the accused petitioner, as such, she has made no objection if bail is granted to the petitioner.

I have considered the submissions made by the learned counsel for both the parties and also perused the Case Diary.

It is seen that the incident occurred on 19.07.2022 and the informant has filed the complaint case before the Court of learned CJM, Karimganj, on 17.08.2022, i.e., after one month of the incident. Subsequently, the said complaint petition was forwarded to the Police Station for registering a case. Accordingly, a case was registered vide Badarpur PS Case No. 190/2022, under Sections 376/120(B)/307/325/354/34 IPC.

As per the complaint petition/FIR, as well as the statement of the victim recorded under Section 164 CrPC, the allegation against the accused petitioner is that on

19.07.2022, in the evening time, in a pre-planned manner, the accused petitioner came to her house and at that time, she was alone and taking advantage of her being alone in the house, he had committed rape on her. It is nowhere stated by the victim/informant that due to the alleged incident, she had sustained any injury on her person. It is also not stated by the informant that she had informed the matter to her husband or any of her family members. Under such backdrop, it can be said that though the allegation was made against the accused petitioner for committing sexual act with the informant, but it transpires that the informant was a consenting party to have sexual act with the petitioner.

Under such backdrop and in view of the facts and circumstances of the case, this Court is of the opinion that the petitioner may be granted the privilege of pre-arrest bail.

Accordingly, it is provided that in the event of arrest of the accused petitioner, namely, Sri Niranjan Shil @ Niranjan Roy, in connection with Badarpur PS Case No. 190/2022, under Sections 376/120(B)/307/325/354/34 of the Indian Penal Code, 1860, he shall be released on bail of Rs. 25,000/- (Rupees twenty five thousand) only with one surety of like amount to the satisfaction of the arresting authority.

The above privilege is, however, subject to the following conditions:

- (i) that the petitioner shall appear before the Investigating Officer,

within a period of 7 (seven) days from today;

- (ii) that the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;
- (iii) that the applicant 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
- (iv) that the petitioner shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Karimganj, without prior permission.

The bail application stands disposed of.

Case Diary be returned.

**JUDGE**

**Comparing Assistant**