
(2021) 08 GAU CK 0048

Gauhati High Court

Case No: Bail Application No. 1623 Of 2021

Utsav Kadam

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: Aug. 13, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 161, 164, 439#Indian Penal Code, 1860 " "
Section 120B, 307, 328, 376

Citation: (2021) 08 GAU CK 0048

Hon'ble Judges: Ajit Borthakur, J

Bench: Single Bench

Advocate: K N Choudhury

Final Decision: Disposed Of

Judgement

Hearing held through virtual mode.

Heard Mr. K.N. Choudhury, learned Sr. counsel appearing for the accused petitioner as well as Mr. D. Das, learned Addl. P.P., Assam appearing for

the State respondent. Also heard Ms. S. Sarma, learned counsel for the informant.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely Utsav Kadam has prayed for grant of bail in connection with Session Case

No. 36/2021 (arising out of North Guwahati P.S. Case No. 53/2021) pending before the Court of learned Addl. Sessions Judge, Kamrup (Rural),

Amingaon, charge-sheeted under Sections 376/328/307/120B of the IPC.

The scanned copy of the record of Sessions Case No. 36/2021 (corresponding to North Guwahati P.S. Case No. 53/2021) along with the case diary,

as called for, is placed before the Court.

Mr. K.N. Choudhury, learned Sr. counsel appearing for the accused petitioner, contends that after completion of investigation, the police submitted

Part Charge-sheet under Sections 376/328/307/120B of the IPC and Supplementary final charge-sheet against the accused, who is a young youth

aged about 21 years and is a brilliant student of B. Tech Pre-final year of Indian Institute of Technology (IIT, Guwahati in

chemical engineering. Mr. Choudhury further contends that the accused has been in judicial custody for about 120 days in connection with the case,

which is entirely based on assumption of commission of the offence of rape without any credible evidence. Mr. Choudhury, learned Senior counsel

also contends that as the investigation has already been completed and as there is no chance of him jumping the course of justice in any manner, being

a student of I.I.T., Guwahati, further continuation of his detention for the purpose of trial of the case may not be warranted and that would amount to

causing further damage to his brilliant academic pursuit.

Strongly opposing the bail application, Mr. D. Das, learned Addl. P.P., contends that the allegations made in detail by the victim girl, who is a student

of 2nd year B. Tech Chemical Engineering of I.I.T., Guwahati, in her F.I.R., dated 07.04.2021 and in the statements recorded under Sections 161 and

164 Cr.P.C. and further, the charge-sheet prima facie establish a clear case in favour of the victim girl. Mr. Das also contends that if the liberty of bail

is granted to the accused, the trial of the case is certain to be hampered, which may occasion gross injustice to the victim.

Appearing on behalf of the informant/victim girl, Ms. S. Sarma, learned counsel, vehemently opposes granting of bail to the accused in such a serious

offence, which is against the society. Ms. Sarmah citing the ratio of the judgments relating to the factors to be considered while granting bail rendered

by the Hon'ble Supreme Court in 1) Mahipal Vs. Rajesh Kumar alias Polia and Anr., reported in (2020) 2 SCC 118; 2) Masroor Vs. State of

Uttar Pradesh and Anr., reported in (2009) 14 SCC 286; 3) Anil Kumar Yadav Vs. State (NCT of Delhi) and Anr., reported in (2018) 12 SCC 129; 4)

Sangitaben Shaileshbhai Datanta Vs. State of Gujarat and Anr., reported in (2019) 14 SCC 522 5) Prasanta Kumar Sarkar Vs. Ashis Chatterjee and

Anr., reported in (2010) 14 SCC 496; 6) Aman Kumar and Anr. Vs. State of Haryana, reported in (2004) 4 SCC 379; 7) Narayanamma (Kum) Vs.

State of Karnataka and Ors., reported in (1994) 5 SCC 728; 8) Narender Kumar Vs. State (NCT of Delhi), reported in (2012) 7 SCC 171; 9) State of

Maharashtra and Anr. Vs. Madhukar Narayan Mardikar, reported in (1991) 1 SCC 57; 10) State of Punjab Vs. Gurmit Singh and Ors., reported in

(1996) 2 SCC 384; 11) State of U.P. through CBI Vs. Amarmani Tripathi, reported in (2005) 8 SCC 21; 12) Anwari Begum Vs. Sher Mohammad

and Anr., reported in (2005) 7 SCC 326 emphasizes that in the backdrop of facts and evidence collected, the accused does not deserve to be released

on bail in this charge-sheeted case.

The F.I.R. reveals the allegations, inter-alia, that on 28.03.2021 at around 9 p.m., the accused, a student of I.I.T., Guwahati lured the informant/victim

female student of the same educational institution to Aksara School premises, in the pretext of discussing about her responsibility as the Joint

Secretary of the Finance and Economic Club of the students of the I.I.T., Guwahati and after making her unconscious, by forcibly administering

alcohol raped her. The victim regained her consciousness at around 5 a.m., the next morning at Guwahati Medical College and Hospital (G.M.C.H.),

Guwahati, where she underwent treatment and forensic examination etc. She was discharged from G.M.C.H., Guwahati on 29.03.2021 and then

shifted to the Hospital at IIT, Guwahati where the underwent treatment till 03.04.2021.

I have given anxious considerations to the above submissions made by the learned counsel of both sides and the citations referred to by the learned

counsel appearing for the informant/victim as well as the relevant case record along with the case diary.

It is pertinent to be mentioned that it is judicially well settled that while dealing with a bail application, the Court is not called upon to discuss the merits

or demerits of the evidence available against the accused, but some reasons for prima facie concluding while bail is being granted need to be indicated

in brief.

On hearing the learned counsel for both sides with reference to the relevant documents such as F.I.R., medical report and statements under Sections

161 and 164 Cr.P.C., the contents of the charge-sheet, the Fact Finding Committee Report etc., there is a clear prima facie case as alleged against the

accused petitioner. However, as the investigation in the case is completed and both the informant/victim girl and the accused are the state's future

assets being talented students pursuing technical courses at the I.I.T., Guwahati, who are young in the age group of 19 to 21 years only and further,

they are being hailed from two different states, continuation of detention of the accused in the interest of trial of the case, if charges are framed, may

not be necessary. A perusal of the list of witnesses too, cited in the charge-sheet, this Court finds no possibility of the accused tampering with their

evidence or influencing them directly or indirectly, if released on bail.

For the reasons, set forth above, it is directed that the accused, named above, shall be released on bail of Rs. 30,000/- (Rupees Thirty Thousand) with

two sureties of the like amount to the satisfaction of the learned Sessions Judge, Kamrup at Amingaon, subject to the following conditions-

i) That the accused/petitioner shall continue to appear before the learned trial Court, on all dates to be fixed from time to time, till the case is disposed

of;

ii) That the accused/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 Police Officer or the Court.; and

iii) That the accused/petitioner shall not leave the territorial jurisdiction of the Court of learned Sessions Judge, Kamrup at Amingaon without prior

written permission of the learned Sessions Judge, Kamrup at Amingaon.

Any violation of the above conditions will warrant cancellation of the bail order after due process of law.

With the above directions, the bail application stands disposed of.