

Bail Application No. 506/2020

Order-sheet
Present: Sh. S.K. Poddar
Sessions Judge, Morigaon

25.09.2020

The Court is functioning in restricted manner due to Corona Virus pandemic through VC by using JITSI software.

Ld. Advocate for the accused petitioner and Ld. PP are present.

This is a petition filed u/s 438 Cr.P.C for granting liberty of prearrest bail to the accused petitioners namely, Amar Jyoti Das and Gopal Das, who are apprehending arrest in connection with Morigaon PS Case No. 530/2020 registered u/s 365/376(3) IPC rw section 6 of POCSO Act.

Called for case diary is received and perused the same.

Heard both the sides.

During hearing on the bail petition, Ld. Advocate for the accused petitioner has stated that the victim is aged about 17 years and on her own she went to the house of the accused, having love affairs with accused Amar Jyoti Das. On the other hand, Ld. PP has objected on maintainability of the bail petition by citing section 438 (4) Cr.P.C. I have considered the submissions of both the sides.

FIR dated 28.08.2020 lodged by Sh. A Hira discloses that on 26.08.2020 at about 5 PM, his minor daughter was kidnapped by the accused persons namely Amar Jyoti Das and Gopal Das and kept her confined. Accused Amar Jyoti Das kept her confined in his house as his wife. On knowing this, when the informant went to the house of the accused Amar Jyoti Das, accused Amar Jyoti Das refused to return the victim and hence the FIR.

On perusal of the case diary, it appears that I.O has collected one school certificate showing the date of birth of the victim as 23.01.2004. Thus, it appears that victim is aged about 16 years 7 months, on the date of alleged incident of 26.08.2020. Thus, apparently section 376(3) IPC is found not attracted in this case and hence, there is no bar in considering the bail application for grant of prearrest bail.

Now coming on merit of the case, on going through the statement of the victim recorded u/s 161 Cr.P.C & 164 Cr.P.C it appears that she stated regarding taking her by accused Amar Jyoti Das in a vehicle to Guwahati, then again he returned back to his own house, wherefrom, she was recovered by the police. In her statement u/s 164 Cr.P.C, she further stated that though accused put vermilion on her forehead, but there was no physical relationship between them. In her 164 Cr.P.C she is totally silent regarding taking her to Guwahati or using force while boarding in a traveller, which is a public vehicle. Considering the materials in the case diary, custodial interrogation might not be required in this case, as no offence of rape/ penetrative sexual assault is made out. There is no iota of allegation against other accused namely, Gopal Das.

Considering all above, prayer of pre-arrest bail is **allowed** to the accused persons namely, Amar Jyoti Das and Gopal Das with following conditions:

(A) Accused persons namely, Amar Jyoti Das and Gopal Das shall appear before the I.O within next 30 days and in the event of their arrest they shall be released on bail on execution of a bond of Rs. 10,000/- (ten thousand) each with one surety of like amount to the satisfaction of arresting authority.

(B) Accused persons namely, Amar Jyoti Das and Gopal Das shall cooperate with the I.O in further investigation and shall not hamper or tamper the investigation.

Send back the case diary along with a copy of this order to O/C Morigaon PS.

A true copy of this order (free of cost) be given to the Ld. Advocate of the accused petitioner under the signature of Bench Assistant for treating the same as official certified copy.