

GAHC010107322021



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THE GAUHATI HIGH COURT

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

Case No. : Bail Appln./1623/2021

UTSAV KADAM
SON OF SHRI UDAY KADAM
PERMANENT RESIDENT
OF B901, PRAKARTI, GOKULDHAM, GOREGAON, EAST MUMBAI-63.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

13.08.2021

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 ('I.I.T.' for short), 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

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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 she 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

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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.

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

JUDGE

Comparing Assistant