
(2013) 06 GAU CK 0039
In the Gauhati High Court
Case No : Anticipatory Bail No. 2366 of 2013

Sri Ditumoni Hazarika

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 05-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 438
Penal Code, 1860 (IPC) — Section 354A, 354D, 361, 366(A), 370

Citation : (2013) 3 GLD 506 : (2013) 3 GLT 889

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : F.K.R. Ahmed, for the Appellant; B.B. Gogoi, Additional P.P., for the Respondent

Judgement

B.D. Agarwal, J.—This application u/s 438 of the Code of Criminal Procedure, 1973, has been filed by the accused, namely, Ditumoni Hazarika seeking pre-arrest bail apprehending his arrest in connection with Narayanpur PS Case No. 45 of 2013 (GR No. 425 of 2013) u/s 366(A) of the Indian Penal Code. Heard Mr. F.K.R. Ahmed, learned counsel for the petitioner as well as Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State of Assam. I have also perused the FIR, victim's statement given u/s 164 Cr.P.C. and the other documents, regarding age of the victim girl, annexed with the bail application.

2. The FIR was lodged on 24.3.2013 by the father of the victim girl alleging that his 17 year old daughter was kidnapped by the accused. The name of kidnapper came to the knowledge of the father in the morning and within hours the FIR was lodged.

3. Mr. Ahmed submitted that the victim girl was produced before the I.O. by the father of the accused himself. Thereafter the victim girl was also produced before a Judicial Magistrate whereupon her statement u/s 164 Cr.P.C. was recorded. According to the learned counsel in the said statement the victim girl has candidly admitted that she had eloped with the accused after long affair and

after eloping they have married each other. In the bail application the date of marriage and the system in which both the victim and the accused have married has not been disclosed.

4. Mr. Ahmed, learned counsel for the petitioner further submitted that as per the birth certificate issued by the Government of Assam the victim girl was 17 years 10 months on the date of alleged kidnapping and as per medical jurisprudence the victim girl was on the verge of attaining majority. The learned counsel further submitted that in view of the adult age of the victim girl and also in view of the fact that the victim girl had voluntarily eloped with the accused no offence of kidnapping is made out.

5. Admittedly the victim girl did not attain the age of 18 years on the date of the incident i.e. on 23.3.2013 since the victim girl was born on 23.5.1995. It has been noticed that when an accused is a juvenile and short of even one or two days from the date of attaining majority the accused take the benefit of Juvenile Act. In my considered opinion the same principle should also be applied if the victim girl is also a juvenile. I have already noted earlier that the victim girl was less than 18 years of age on the date of the offence.

6. Section 361 of the Indian Penal Code (briefly "IPC") has defined kidnapping of minors from lawful guardianship. Under this law the age of female minor has been prescribed as 18 (eighteen) years. Prior to the amendment of the law in the year 1949 the age for minor girls was sixteen years. Similarly, under the Juvenile Justice (Care and Protection) Act, 2000 all children below the age of 18 years are treated as juvenile/child. Very recently the panel law has also been amended in the month April, 2013. While amending Section 375 IPC the age for giving consent for sexual intercourse has been increased from 16 to 18 years. In this way the legislature appears to have taken cognizance of the fact that exploitation of minor girls are on the rise and needs to be checked by way of providing stringent punishments. I am also of the view that the aforesaid provisions of law are protective in nature and if the prescribed age of the victim is diluted it would amount to re-writing the law. I am also of the view that the laws, particularly dealing with offences like kidnapping and sexual assault etc., have to be applied and interpreted in favour of the victims and not in favour of the offenders.

7. Crimes against women are increasing or at least unabated. Majority of such cases are that of kidnapping or sexual assault. Equally in large number of cases minor and adult girls are enticed to establish physical relationship on the promise of marriage. After satisfying the sexual lust the girls are abandoned. If minors are allowed to be lured or enticed away they are likely to ruin their carrier and their dream life may also come to an end prematurely.

8. The IPC has been recently amended w.e.f. 2.4.2013 vide Amendment Act No. 13 of 2013. By virtue of these amendments not only the sentencing policy in respect to crimes against women has been stiffer but a new series of offences have also been introduced from Section 354A to Section 354D. The offence of

women trafficking has also been widened by substituting Section 370. Even then, in my opinion, the amendments are not sufficient to prevent exploitation of minor girls without specifically making enticement of minor girls an offence. Hence, it is high time that the Government should consider suitable amendment in the Penal Code so as to make dating and enticing of minor girls also an offence to prevent exploitation of adolescent girls.

9. The above apart, in the statement u/s 164 Cr.P.C. the victim has stated that she had developed affair with the accused since September, 2009. At that time the victim was only 14 1/2 years old girl. At this young age it cannot be expected that a girl would develop affair without any enticement or allurement by a person from opposite sex. Even if such an affair by a juvenile girl is voluntary it cannot be approved under law, more so if the affair and dating results into eloping immediately after attaining the age of majority. Be that as it may, in this case the victim girl was minor on the date of eloping.

10. The above apart, the accused is presently 30 years old person as per his affidavit. If that be so, he was 26 years adult person in the year 2009 when the victim girl was only 14 1/2 years old juvenile. The age difference between the boy and the girl also indicates that the accused/petitioner must have enticed the girl, taking the advantage of her young age. This court has also come across many cases in which the girls are enticed at the young age but they are kidnapped or eloped just after attaining the age of 18 years. Possibly this aspect was not considered while amending the IPC in the month of April, 2013.

11. For the foregoing reasons, I hold that the petitioner has committed a serious offence and he is not entitled to the privilege of anticipatory bail. Accordingly, the prayer is rejected. The Registry is directed to transmit a copy of the order to the I.O. through the Superintendent of Police, Lakhimpur.