

Crl. Misc. Bail Application No. 257 of 2022

Present:- Shri A. Chakravarty, M.A., LL.M., AJS
Sessions Judge, Barpeta

ORDER

29.04.2022

The learned counsel for the petitioner and the learned Special P.P. appointed by the State Government for conducting this case, namely learned Advocate Mr. Makhan Phukan, are present.

The record of the Barpeta Road Police Station Case No. 81/2022, under sections 294/323/353/354 IPC and case diary have been received and are perused.

Heard the learned counsels for both the sides.

This is an application filed under Section 439 Cr.P.C., seeking bail for the accused Shri Jignesh Mevani, who was arrested and remanded to police custody in connection with Barpeta Road Police Station Case No. 81/2022, under sections 294/323/353/354 IPC, on bail.

The FIR of the case was lodged by the alleged victim WSI of the Kokrajhar Police Station, which is reproduced below:-

"With reference to the above, I would like to inform you that today on 21.04.2022 while I was escorting the arrested accused person, Shri Jignesh Mevani, S/O. Shri Natwarlal Parmar in connection with Kokrajhar PS Case No. 183/2022 U/S 120(B)/153A/295A/504/505(1)(b)(c)(2) IPC R/W Section 66 IT Act, from LGB Airport, Guwhati to Kokrajhar along

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with Sri Surjeet Singh Panesar, APS, Additional Superintendent of Police (HQ), Kokrajhar and TSI Mouti Basumatary in govt vehicle. During the way just after crossing the Simlaguri point of Barpeta district at around 01.30 PM, the arrested accused person uttered slang words towards me. When I asked him to behave properly, he got agitated and used more slang words. He pointed finger towards me and tried to frighten me and pushed me on my seat with force. He thus assaulted me during the execution of my legal duty of being a public servant and outraged my modesty by touching me inappropriately while pushing. After reaching Kokrajhar, I immediately informed the matter to my senior officers.

I therefore, request you to register a case against the accused person, Shri Jignesh Mevani, under appropriate sections of law and take legal action."

Learned Sr. Advocate for the petitioner, namely Mr. Angshuman Bora, argued the case yesterday. Learned Sr. Advocate primarily argued on some law points and has submitted that the police have violated the provisions of the Code of Criminal Procedure and the law laid down by the Hon'ble Supreme Court and the Hon'ble Gauhati High Court in making the arrest and hence, has prayed for allowing the bail petition.

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Per contra, learned Special P.P., appointed by the State Government for conducting this case, namely learned Advocate Mr. Makhan Phukan, vehemently argued that the accused was arrested in accordance with the law and the investigation of the case is at initial stage and hence, the bail petition should be rejected.

Learned Sr. Advocate for the petitioner argued that, though, the alleged offences were committed during journey, inside a moving vehicle, while the accused was transported from LGB Airport, Guwhati to Kokrajhar

and the accused was also produced in the court of the learned Chief Judicial Magistrate, Kokrajhar, the first informant did not inform the learned Chief Judicial Magistrate, Kokrajhar about the alleged incident and also did not lodge any FIR with the Kokrajhar police station, though admittedly, after reaching Kokrajhar, the first informant informed her superior officers about the incident. Therefore, the instant FIR is the second information and seems to be manufactured for the purpose of the case, in violation of the provisions of Section 154 and Section 283 of the Code of Criminal Procedure and hence, the learned Sr. Advocate for the petitioner has submitted that the bail petition may be allowed.

Learned Sr. Advocate for the petitioner further argued that not to speak of informing the accused about registration of the instant FIR, the investigating officer did not even mention about the said incident in the two forwarding reports submitted in the aforesaid Kokrajhar P.S. case seeking detention of the accused, of which, one forwarding report was submitted after filing of the FIR of the instant case on 21.04.2022, only to arrest the accused after he was granted bail in the aforesaid Kokrajhar P.S. case, in violation of law laid down by the Hon'ble Supreme Court and Hon'ble Gauhati High Court. By not informing about the alleged incident to the learned Chief Judicial Magistrate, Kokrajhar and by not registering the FIR by the Kokrajhar police, though admittedly, after reaching Kokrajhar, the first informant immediately informed about the incident to her senior officers (her senior officers must be the police officers of the Kokrajhar Police Station above the rank of sub-inspector as the first informant is a WSI (woman Sub-Inspector) of the Kokrajhar Police Station), the police have violated the law laid down by the Hon'ble Supreme Court and the Hon'ble Gauhati High Court in the case of **UDAY CHAND AND OTHERS Vs. SHEIKH MOHD., ABDULLAH, CHIEF MINISTER, J & K AND OTHERS**, reported in (1983) 2 SCC 417

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and by the Hon'ble Gauhati High Court in the case of **Kamal Dutta Vs. Union of India, decided on 20.01.2015.**

In the case of **UDAY CHAND AND OTHERS Vs. SHEIKH MOHD., ABDULLAH, CHIEF MINISTER, J & K AND OTHERS, reported in (1983) 2 SCC 417,** the Hon'ble Supreme Court held as follows:-

"5. *Mr. Kacher stated before us that the petitioners were enlarged on bail in pursuance of the Order passed by this Court on March 2, 1981 but they were subsequently arrested for some other offences alleged to have been committed by them prior to March 2, 1981. We are quite amazed at this statement and we should have expected that if after the order of bail passed by us the authorities of the State considered it fit to arrest any of the petitioners for any other offences, it was their bounden duty to apprise this Court before taking these persons in custody, especially when no disclosure was made to us when we passed the order of bail that any case or cases were under investigation against any of the petitioners. We regret that this elementary courtesy to this Court was not shown. We would like to reiterate that the petitioners shall be treated as free citizens inspite of the fact that they have been subsequently arrested which arrests are clearly contrary to the order of bail passed by this Court.*"

In the case of **Kamal Dutta Vs. Union of India, decided on 20.01.2015,** the Hon'ble Gauhati High Court held as follows:-

"25. *Having regard to the above, Court is of the view that the accused Shri Tapan Das should now be released as his continued detention has become clearly untenable. As noticed above, he has been granted bail by this Court in one out of the 4 cases i.e., in Pasighat PS Case No. 56/2014. He shall now be released on bail in connection with other three cases,*

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namely, Itanagar PS Case No. 304/2013, Basar PS Case No. 09/2014 and Aalo PS Case No. 07/2014 subject to the condition that he shall cooperate with the investigation of the cases and that he shall also appear before this Court on the next date."

I agree with this contention of the learned Sr. Advocate for the petitioner and hold that the bail petition has to be allowed on this count alone.

Learned Sr. Advocate for the petitioner further argued that by remanding the accused to five days police custody, the learned Chief Judicial Magistrate, Barpeta has violated the law laid down by the Hon'ble Hon'ble Supreme Court in the case of **Arnesh Kumar vs State of Bihar, reported in (2014) 8 SCC 273**, in as much as, the grounds/reasons cited by the learned Chief Judicial Magistrate, Barpeta, that is, "for visiting the scene of crime for re-construction and to identify the place of occurrence with the accused" for remanding the accused to police custody are neither sufficient nor justifiable.

In **Arnesh Kumar (supra)**, the Hon'ble Hon'ble Supreme Court, inter alia, passed the following directions:-

"Para No. 11.4:- The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention.

Para No. 11.8:- Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."


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Learned Sr. Advocate for the petitioner vehemently argued that the grounds cited by the learned Chief Judicial Magistrate, Barpeta for remanding the accused to police custody defies all logic as the offence was allegedly committed inside a moving vehicle and if the crime scene has to be re-reconstructed, then the accused shall have to be put inside the vehicle with the alleged victim women and the two police officers who had accompanied her and the accused has to be asked to outrage the modesty of the woman again, which is absurd. I agree with this contention of the learned Sr. Advocate for the petitioner and hold that this is not a case where custodial interrogation of the accused is necessary and the learned Chief Judicial Magistrate, Barpeta should not have remanded the accused to police custody even for a single day.

In view of the above, I agree with this contention of the learned Sr. Advocate for the petitioner and hold that the bail petition has to be allowed on this count also.

Now let us discuss the case on merit.

The FIR of the case was lodged by the alleged victim woman of the case, who is a woman Sub-Inspector of police of the Kokrajhar Police Station and that too, after informing her superior police officers at Kokrajhar and therefore, after taking all necessary advice. Therefore, though the instant FIR is the second FIR and hence, not maintainable, let us assume the FIR to be a true and correct account of the alleged incident and look into the merit of the case.

According to the FIR, along with Sri Surjeet Singh Panesar, APS, Additional Superintendent of Police (HQ), Kokrajhar and TSI Mouti Basumatary, while the first informant was escorting the accused person from LGB Airport, Guwhati to Kokrajhar in a government vehicle, after

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they crossed Simlaguri, under Barpeta Road Police Station, at around 01.30 PM, the accused uttered slang words at the first informant. When the first informant asked the accused to behave properly, the accused got agitated and used more slang words. The accused pointed his fingers towards the first informant and tried to frighten the first informant and pushed her down into her seat with force. The accused thus assaulted the first informant while she was discharging her duties as a public servant and outraged her modesty by touching her inappropriately while pushing her down. After reaching Kokrajhar, the first informant informed about the incident to her senior officers. But, surprisingly, based on her information, her senior officers did not register an FIR, which is a clear violation of the provisions of the Section 154 of the Code of Criminal Procedure, 1973 which states that, every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

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Further, though the Barpeta Road Police registered the FIR under Section 294 IPC also, allegedly for uttering slang words by the accused at the first informant, as there is no mention in the FIR about what words the accused uttered, the case should not have been registered under Section 294 IPC.

In the case of **Pawan Kumar vs State Of Haryana And Anr., reported in 1996 SCC (4) 17, JT 1996 (5) 155**, the Hon'ble Supreme Court held as follows:-

"In order to secure a conviction the provision requires two particulars to

be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed."

Therefore, as the first informant did not mention what were the obscene words uttered by the accused, the word 'slang' used in the FIR cannot be held to be an obscene act within the meaning of obscene act as per Section 294 of the Indian Penal Code.

Further the moving government vehicle in which the accused was transported by the first informant and the aforesaid two police officers, cannot be held to be a "public place" within the meaning of "public place" as per Section 294 IPC as nobody else had access to the said vehicle. Therefore, Section 294 IPC is not attracted to the case.

Further, pointing of fingers at the first informant with intent to frighten her and pushing her down into her seat with force, cannot be held to be using criminal force by the accused with intent to prevent the first informant from discharging her duties as a public servant. Therefore, commission of the offence under Section 353 I.P.C., prima facie, is not established.

Further, the alleged pushing down of the first informant into her seat also cannot be held to have been done with intent to outrage her modesty and that too, in presence of two other police officers, namely Sri Surjeet Singh Panesar, APS, Additional Superintendent of Police (HQ),


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Kokrajhar and TSI Mouti Basumatary. No sane person will ever try to outrage the modesty of a lady Police Officer in presence of two male police officers and there is nothing in the record to hold that the accused Shri Jignesh Mevani is an insane person.

Deciding an appeal where the appellant was convicted for commission of an offence under Section 354 I.P.C. inside a train, in the case of **Ram Das vs State Of West Bengal, reported in AIR 1954 SC 711**, a three-Judge Bench of the Hon'ble Supreme Court held as follows:-

"The story of a person trying to outrage the modesty of two women in the presence of two gentlemen is so unnatural, that there must be clear and unimpeachable evidence before it can be accepted."

In the said case, after elaborate discussion, the Hon'ble Supreme Court convicted the appellant under Section 352. But, in the said case, there were independent eye witnesses whereas in the instant case, there is no evidence, not to speak of availability unimpeachable evidence, as the statement of the two police officers accompanying the first informant cannot be treated to be admissible in evidence. In view of the above, commission of the offence under Section 354 I.P.C. by the accused person is also, prima facie, not established.


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We are now left with the commission of the offence under Section 323 IPC by the accused person. Even assuming while denying that the accused had pushed down the first informant into her seat and thereby, caused bodily pain to her, which is an offence punishable under Section 323 IPC, the same is a bailable offence.

Further, in her statement recorded by the Magistrate under Section 164 Cr.P.C., the first informant has stated that along with Sri Surjeet Singh

Panesar, APS, Additional Superintendent of Police (HQ), Kokrajhar and TSI Mouti Basumatary, while she was transporting the accused Shri Jignesh Mevani from LGB Airport, Guwhati to Kokrajhar in a government vehicle, when they reached Simlaguri, Barpeta Road, **she felt** (emphasis added) that the accused was pushing her. She then asked him to behave but he abused her in his own language. Seeing the same, Sri Surjeet Singh Panesar asked the accused to behave properly with an on duty police officer. As she did not want to create a scene, she sat in a different seat. After reaching Kokrajhar, she told the Superintendent of Police, Kokrajhar about the incident and thereafter, lodged the FIR with the Barpeta Road Police Station.

Thus, the contrary to the FIR, the victim woman has deposed a different story before the learned Magistrate. It seems, the victim woman was seating next to the accused person and as the vehicle was moving, the body of the accused must have touched the body of the victim woman and she felt that the accused was pushing her. But, the victim woman did not depose that the accused used his hands and outraged her modesty. She also did not depose that the accused uttered obscene words at her. She has deposed that the accused abused her in his language. But, she definitely did not understand the language of the accused. Otherwise, she would have mentioned the language used by the accused. In view of the above testimony of the victim woman, the instant case is manufactured for the purpose of keeping the accused Shri Jignesh Mevani in detention for a longer period, abusing of the process of the court and the law.

Further, as the victim woman has deposed that she told about everything to the Superintendent of Police, Kokrajhar and thereafter, lodged the FIR, the instant FIR is second FIR and the Superintendent of Police, Kokrajhar should have asked her to lodge the FIR with the Kokrajhar Police Station.

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In fact, the Superintendent of Police, Kokrajhar should have and ought to have, directed the victim woman to lodge the FIR with the Kokrajhar Police Station. But, for reasons best known to him, he did not do so. Therefore, the case registered based on the instant FIR is not maintainable as the FIR is the second FIR.

In view of the above, the bail petition is allowed. The Investigating Officer / Officer In-charge of the Barpeta Road Police Station is directed to release the accused Shri Jignesh Mevani on his furnishing Personal Recognizance Bond of Rs. 1,000/-, forthwith.

Send a copy of this order to the Investigating Officer / Officer In-charge of the Barpeta Road Police Station for compliance, immediately.

Further, if the instant case is accepted to be true and in view of the statement of the victim women recorded by the Magistrate under Section 164 Cr.P.C., which is not, then we will have to re-write the criminal jurisprudence of the country. Because, according to Section 26 of the Evidence Act, even confession made by an accused while in custody of police cannot be proved against him, but if the instant case is accepted to be true, not to speak of accepting the confession made by the accused to be true, will have to accept the statements made by three police personnel, who were transporting the accused and as such, the accused was in their custody, to be true and use against the hapless accused. The Legislature never even imagined such an eventuality and hence, perhaps, did not make any provision for such an eventuality. The legislature knew that the police will compel an accused in their custody to make confession under coercion and hence, made the confession made by the accused while in custody of the police not admissible in evidence, with the exception of Section 27 of the Evidence Act. But, the Legislature never imagined that the court will have to deal with a case

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like the instant case where an accused will be tried allegedly for committing some offences while he was in the custody of the police, which no one else has seen.

In view of the above and to prevent registration of false FIR like the present one and to give credibility to the police version of occurrences like the arrest of accused persons and the accused persons attempting to escape from police custody in the midnight, while the accused was allegedly leading the police personnel to discover something and the police personnel firing and killing or injuring such accused, which has become a routine phenomenon in the State, the Hon'ble Gauhati High Court may perhaps consider directing the Assam Police to reform itself by taking some measures like directing each and every police personnel engaged in law and order duty to wear Body Cameras, to install CCTV Cameras in vehicles while arresting an accused or taking an accused to some place for discovery of some articles and for such other reasons and also to install CCTV Cameras inside all the police stations. Otherwise our State will become a Police State, which the society can ill afford. Even opinion is growing in the world for providing next generation human rights to the people in the democratic countries like, right to recall an elected representative, right to destabilise an elected government, etc. therefore, converting our hard earned democracy into a Police State is simply unthinkable and if the Assam Police is thinking about the same, the same is perverse thinking.

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Therefore, send a copy of this order to the Registrar General of the Hon'ble Gauhati High Court for placing the same before Hon'ble the Chief Justice to look into this aspect of the matter and to consider whether the matter may be taken up as a Public Interest Litigation to curb the ongoing police excesses in the State.

Return the record of the Barpeta Road Police Station Case No. 81/2022 and the case diary with copy of this order, immediately.

This bail petition is disposed of accordingly.



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