

GAHC010002762023



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

Case No. : AB/40/2023

DULAJ UDDIN AND 2 ORS
S/O LATE ABDUL OJAHAR, R/O VILL-BANGALIPARA PART-I, P.O.-
BANGALIPARA, P.S.-BILASIPARA, DIST-DHUBRI, ASSAM, PIN-783348

2: ISHAHAK ALI @ ASAHOQUE ALI
S/O NAYNGMUDDIN SHEIKH
R/O VILL-BANGALIPARA PART-I
P.O.-BANGALIPARA
P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-783348

3: SWEETY BEGUM
R/O VILL-BANGALIPARA PART-I
P.O.-BANGALIPARA
P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-78334

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR M Z SHAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

06.02.2023

Heard Mr M Z Shah, learned counsel for the petitioners and Ms S H Bora, learned Additional Public Prosecutor for the State of Assam.

Case Diary is received.

This is an application filed under Section 438 CrPC, by the petitioners, 1) Dulaj Uddin, 2) Ishahak Ali @ Asahoque Ali and 3) Sweety Begum, seeking pre-arrest bail in connection with Bilasipara PS Case No. 349 of 2022, under Section 376 IPC, read with Section 4 of the POCSO Act.

As per the FIR, it is alleged that accused No. 1 (named in the FIR), one Tonijul Hoque developed love relation with the victim and he used to visit the house of the victim and committed rape on her. It is further alleged that due to physical relationship with the said Tonijul Hoque, the victim became pregnant. Subsequently, when she approached the family members of the said Tonijul Hoque, they assaulted her and drove her out of their house.

The petitioner No. 1 is the father of the accused Tonijul Hoque. The petitioner No. 2 is the brother-in-law of the petitioner No. 1 and the petitioner No. 3 is the sister of the accused Tonijul Hoque.

It is submitted by the learned counsel for the petitioners that there is no allegation against the petitioners in the FIR as well as in the statement of the victim that they have committed any offence under Section 376 IPC or Section 4 of the POCSO Act. So, pre-arrest bail may be granted to the petitioners.

Per contra, learned Additional Public Prosecutor has fairly submitted that there is no allegation against the present petitioners for committing the offences under Section 376 IPC or Section 4 of the POCSO Act. As such, he has made no objection to the prayer of the petitioners to grant them pre-arrest bail.

I have considered the submissions made by the learned counsel for both the parties.

I have also gone through the Case Diary as well as the statement of the victim recorded under Section 164 CrPC, wherein, she has stated before the learned Magistrate that the incident occurred in the year 2021. The accused Tonijul Hoque used to visit their house and subsequently, the relationship developed. The accused Tonijul also promised to marry and they had physical relationship, due to which, the victim became pregnant. Subsequently, accused Tonijul stopped coming to their house and as such, the FIR has been lodged.

Having gone through the statement of the victim as well as the FIR and other documents available in the record, it appears that the victim has made allegation only against the accused No. 1, Tonijul Hoque (named in the FIR) for the offence under Section 376 IPC and Section 4 of the POCSO Act. However, there is no allegation against the present petitioners to be involved in the offences as alleged in the FIR. Hence, they are entitled to the privilege of pre-arrest bail.

Accordingly, it is provided that in the event of arrest in connection with Bilasipara PS Case No. 349 of 2022, the petitioners, namely, 1) Dulaj Uddin, 2) Ishahak Ali @ Asahoque Ali and 3) Sweety Begum shall be released on pre-arrest bail on executing a bond of Rs. 20,000/- (Rupees Twenty Thousand) each, with one surety each of like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:

- (i) the petitioners are directed to appear before the Investigating Officer within a period of 10 (ten) days from today.
- (ii) that the petitioners shall make themselves available for interrogation by the Investigating Officer as and when required;
- (iii) that the petitioners 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 them from disclosing such facts to the Court or to any police officer.

With the aforesaid directions, this Anticipatory Bail Application stands disposed of.

Send back the Case Diary.

JUDGE

Comparing Assistant