

GAHC010007312023



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

Case No. : AB/130/2023

SAIFUL ISLAM
S/O- MOMIR ALI, R/O- VILL- TIAMARI PART-I, P.S- GAURIPUR, DIST-
DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

24.03.2023

Heard Mr. M.A. Islam, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioner,

who is apprehending arrest in connection with Gauripur P.S. Case No. 1051/2020, under Sections 365/34 of the Indian Penal Code.

It is submitted by the learned counsel for the petitioner, that the victim girl has already been recovered and her statement under Sections 161 and 164 Cr.P.C. is also recorded by the I.O. Out of love affairs, she eloped with the present petitioner and subsequently, they also got married.

He further submitted that the custodial interrogation is not at all necessary in this case. The present petitioner is ready to co-operate with the I.O. for further investigation of the case, if he is granted with the privilege of pre-arrest bail.

On the other hand, Mr. Das, learned Additional Public Prosecutor for the State respondent has submitted that from the statement made by the victim under Sections 161 as well as 164 Cr.P.C., it is a fact that she went herself with the petitioner out of love affairs. But from the note of the I.O., it reveals that there is a probability of adding the Section of POCSO Act along with the Child Marriage Act. In that event, his custodial interrogation will be necessary in this case.

After hearing the submissions of learned counsels for both sides and also considering the fact of recovery of the victim girl and her statements made under Sections 161 and 164 Cr.P.C., I am of the view that custodial interrogation of the present accused/petitioner is not necessary in this case and therefore, I find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioner.

Accordingly, it is provided that in the event of arrest of the accused/petitioner, namely, Saiful Islam, in connection with Gauripur P.S. Case

No. 1051/2020, under Sections 365/34 of the Indian Penal Code, he shall be enlarged on pre-arrest bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the arresting authority, subject to the following conditions:

(i) that the petitioner shall appear before the Investigating Officer of the case within a period of 1 (one) week from today;

(ii) that the petitioner shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the investigation of the aforesaid P.S. Case; and

(iii) that the 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 Court or to any police officer; and

The anticipatory bail application stands disposed of in terms above.

JUDGE

Comparing Assistant