

GAHC010009172023



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

Case No. : AB/181/2023

SHAHAJAMAL HUSSAIN @ SHAHAJAMAL
S/O- LATE ROSTOM ALI, VILL- LATIBARI PART-I, P.S- ABHAYAPURI, DIST-
BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:NABIYA KHATUN
W/O NUR MOHAMMAD ALI
VILL- LATIBARI PART-III
PO/PS- ABHAYAPURI
DIST.- BONGAIGAON ASSAM
PIN- 78338

Advocate for the Petitioner : MR. A M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27.02.2023

Heard Mr. A.M. Khan, learned counsel for the petitioner. Also heard
Mr. Bankim Sarma, learned Addl. P.P. for the State.

2. Apprehending arrest in connection with Abhayapuri P.S. Case No. 555/2022, under sections 365/376/34 IPC read with section 6 of the POCSO Act, the petitioner, Shahajamal Hussain @ Shahajamal has filed this pre-arrest bail application under section 438 Cr.P.C.

3. Notice was issued to the informant by registered post as well as by way of dasti. In this regard, an affidavit has been filed by the petitioner to the effect that the petitioner had gone to the house of the informant along with two witnesses, but the informant (respondent no. 2) refused to acknowledge the receipt of notice. Thus, the matter has been heard.

4. The learned counsel for the petitioner has submitted that the petitioner is the father of the boy against whom the allegation is of kidnapping and sexually assaulting the minor victim girl. It is submitted that it is inconceivable that the petitioner, being the father, would aid and abet the commission of sexual assault by his son.

5. The learned Addl. PP has produced the case diary and has opposed the prayer for bail on the ground that the minor victim girl has stated that she was kept in the house of the petitioner for 15 days, where the son of the petitioner had raped her on multiple occasions.

6. There is no doubt that the victim girl had made consistent statement before the I.O. under section 161 Cr.P.C., as well before the learned Magistrate under section 164 Cr.P.C. However, there is an unexplained delay of about 1¹/₂ months in lodging the FIR. The alleged kidnapping took place on 11.11.2022, but the FIR was lodged on 28.12.2022, with no cogent explanation for the delay. From the statement of the victim girl, it does not appear that she was kept confined in a room inside the house of the petitioner in such a manner that it was impossible for her to contact the outside world.

7. Therefore, the Court is of the considered opinion that custodial interrogation of the petitioner, who had neither kidnapped the victim nor had sexually assaulted her, is not warranted. Therefore, the Court is inclined to grant pre-arrest bail to the petitioner, Shahajamal Hussain @ Shahajamal in connection with Abhayapuri P.S. Case No. 555/2022, under sections 365/376/34 IPC read with section 6 of the POCSO Act, on his furnishing a bail bond for a sum of Rs.50,000/- (Rupees Fifty thousand only) with 1 (one) solvent surety of like amount to the satisfaction of the arresting authority.

8. Bail is granted on the following conditions:-

- a) 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 Court or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses.
- b) That he shall not obstruct the smooth progress of the trial.
- c) That the petitioner shall not misuse his liberty in any manner.
- d) That the petitioner shall not jump over the bail. The petitioner shall appear before the I.O. within a period of 7 (seven) days from the date of this order and shall continue to appear once every month till his personal appearance is dispensed with or charge-sheet is submitted, whichever is earlier.
- e) In the event any condition for grant of bail is violated, it would be open to the I.O. to move the jurisdictional Court and apply for cancellation of bail.

9. Return the case diary.
10. This application stands disposed of.

JUDGE

Comparing Assistant