

GAHC010009672023



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

**Case No. : AB/159/2023**

ABDUR RAHMAN@RAHMAN ALI  
S/O ABDUL KHALEK  
VILL- ABHAYAPUR NO. 1,  
P.S. ABHAYAPURI, P.O. DHALPUR,  
DIST. DARRANG, ASSAM, PIN CODE- 784145

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. M U MAHMUD**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**23.01.2023**

Heard Mr. M.U. Mahmud, learned counsel for the petitioner and Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

[2] By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Abdur Rahman @ Rahman Ali has approached this Court

seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Sipajhar Police Station Case no. 452/2022, registered under Sections 366/325, Indian Penal Code [IPC] for the second occasion, after rejection of his earlier bail application, AB no. 3410/2022 by order dated 01.12.2022.

[3] Mr. Mahmud, learned counsel for the petitioner has submitted that the fact regarding recovery of the allegedly kidnapped girl by the AAMSU members is not based on record. The allegation that the alleged victim had injury on her neck is also not true.

[4] The earlier bail application, AB no. 3410/2022, came up for consideration on 01.12.2022 and on that day, this Court after hearing the learned counsel for the parties and on perusal of the materials in the case diary, rejected the prayer for pre-arrest bail by order dated 01.12.2022. The relevant observations made in the order dated 01.12.2022 are extracted hereinbelow:

*“As per the FIR lodged on 18.10.2022, the informant’s younger sister, aged about 14 years, was allegedly kidnapped by the petitioner at around 09-00 a.m. on 18.10.2022 when she was on her way to tutorial class. The materials in the case diary which includes the statements of the prosecutrix recorded under Section 164, CrPC, go to corroborate the aforesaid version in the FIR. The prosecutrix has further stated that she was taken forcefully by tying her face with a black cloth and thereafter, the petitioner had forcefully taken her to a deserted place. But it was some members of an organization called AAMSU, who rescued her from the captivity of the petitioner. The prosecutrix has mentioned her age as 14 years, as mentioned in the FIR whereas the petitioner is about 22 years of age.*

*Having regard to such incriminating materials available in the case diary against the petitioner, this Court is of the considered view that this is not a fit case to extend the benefit of pre-arrest bail under Section 438, CrPC to the petitioner. Consequently, the prayer for pre-arrest bail is rejected.”*

[5] It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete.

[6] Having regard to the contents of the earlier order dated 01.12.2022 and the two grounds have been urged in the instant application, preferred for the second time, I find no reason for re-consideration of the earlier order dated 01.12.2022, which was made after consideration of the materials available in the concerned case diary, collected during the course of investigation against the petitioner. In such view of the matter, this Court finds no merit in the instant application. Consequently, the instant application stands rejected.

**JUDGE**

**Comparing Assistant**