

GAHC010010182023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

AB No. 124 of 2023

BHAJAN BISWAS AND 7 ORS.

S/O MANINDRA BISWAS R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION
BIJNI DIST. BONGAIGAON ASSAM PIN-783390

2: GOBARDHAN ARJYA

S/O NARESH ARJYA R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION BIJNI
DIST. BONGAIGAON ASSAM PIN-783390

3: GOPAL CHAUHAN

S/O JAGADISH CHAUHAN R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION
BIJNI DIST. BONGAIGAON ASSAM PIN-783390

4: BISHESWAR CHOUHAN

S/O SANKAR CHOUHAN R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION
BIJNI DIST. BONGAIGAON ASSAM PIN-783390

5: BABITA CHAUHAN

W/O MUNILAL CHAUHAN R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION
BIJNI DIST. BONGAIGAON ASSAM PIN-783390

6: SABITA ARJYA

W/O PRAKASH COUHAN R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION
BIJNI DIST. BONGAIGAON ASSAM PIN-783390

7: PARESH DAS @ PARESH CHANDRA DAS

S/O SURYA KANTA DAS R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION
BIJNI DIST. BONGAIGAON ASSAM PIN-783390

8: KAMALABALA ARJYA
W/O SHIBANATH ARJYA R/O TOWN 15 GERUKABRI PS BIJNI SUB DIVISION
BIJNI DIST. BONGAIGAON ASSAM PIN-783390.

VERSUS

THE STATE OF ASSAM

REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocates for the appellant : Mr S A Hussain
Advocate for the respondent : Mr B Sarma, APP, Assam.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Order : 01.02.2023.

ORDER (ORAL)

Heard Mr S A Hussain, learned counsel for the petitioners and Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. The Case Diary is received.

3. The petitioners have preferred an application under Section 438 CrPC, seeking pre-arrest bail in connection with Manikpur PS Case No. 204/2022, under Section 376 IPC, read with Section 4 of the POCSO Act, and Sections 9,10 and 11 of the Prohibition of Child Marriage Act, 2006.

4. The brief facts of the case is that on 27.12.1992 an FIR was lodged by one Dhanjit Choudhury, who is a District Child Protection officer, Bongaigaon alleging inter alia that one Krishna Das had love affair with the minor daughter of Swapan Das of village Gossaigaon under Manikpur Police Station. The age of the victim was 14 years and Krishna Das was about 28 years of age at the relevant time of incident.

5. It is alleged that on 19.12.2022, Krishna Das took the victim to his house and in the evening in the presence of some persons, marriage was solemnized between them. It is further alleged that on the same day, Krishna Das had made physical relationship with the victim and subsequently, she was taken back by her parents. As the victim was a minor, therefore, the marriage itself is invalid and as there was a physical relationship between them, a case was registered under the POCSO Act.

6. It is submitted by the learned counsel for the petitioners that the petitioners are the neighbours of the accused, Krishna Das and they are no way related with the offence and they do not have any information about the alleged offence. As the petitioners are the residents of the locality, wherein the accused Krishna Das resides, the informant has recorded their names in the FIR and they have been falsely implicated in this case.

7. It is also submitted by the learned counsel for the petitioners that they have no previous bad record either with police or any other authority. As the petitioners are local residents under Manikpur Police Station, as such, there is no chance of their absconding. It is further submitted that the accused petitioners will cooperate with the investigation if bail is granted to them.

8. On the other hand, learned Additional Public Prosecutor has fairly submitted that the

provisions for Child Marriage Act is not attracted against the present petitioners. As such, pre-arrest bail may be considered.

9. I have considered the submissions of the learned counsel for both the parties and also perused the Case Diary.

10. The statement of the victim was recorded under Section 164 CrPC by the Magistrate, wherein, she has stated that she had love affairs with Krishna Das, for the last one year. On 19.12.2022, he asked her to accompany him to his house and accordingly, she went to the house of the accused, Krishna Das. His parents knew the relationship between them. The people of their village came to know about their relationship and Krishna Das put vermilion on her head, in the village Shiv Temple and got married to her. After their marriage, they lived together as husband and wife.

11. It appears from the statement of the victim that apparently there is no allegation against the present petitioners that they have committed any offence, which falls under the provisions of Sections 9, 10 and 11 of Prohibition of Child Marriage Act, 2006.

12. Section 9 deals with punishment for male adult marrying a child, which reads as follows-

“Whoever, being a male adult above 18 years of age, contracts a child marriage shall be punishable with Rigorous Imprisonment which may extend to 2 years or with fine which may extend to one lakh rupee or with both.”

13. Section 10 deals with Punishment for solemnizing a child marriage, which reads as under-

“Whoever performs, conducts or directs or abets any child marriage shall be punishable

with Rigorous Imprisonment which may extend to one lakh rupees, unless he proves that he had reasons to believe that the marriage was not a child marriage.”

14. Section 11 deals with Punishment for promoting or permitting solemnization of child marriages, which reads as follows-

“(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organization or association of persons who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, including attending or participating in a child marriage, shall be punishable with Rigorous Imprisonment which may extend to two years and shall also be liable to fine which may extend upto one lakh rupees.

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this Section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnized.”

15. As per FIR, the allegation against the present petitioners is that the marriage between the victim and Krishna Das was solemnized in their presence and cooperation, but it reveals that the present petitioners are only the co-villagers of the accused and the victim. They are no way related to the victim or her family members. Nothing has come out from the statements of the witnesses recorded under Section 161 CrPC, that they were indulged in promoting or permitting solemnization of marriage between the victim and the accused Krishna Das.

16. In view of the above, it is provided that in the event of arrest in connection with Manikpur PS Case No. 204 of 2022, the petitioners, namely, 1) Bhajan Biswas, 2) Gobardhan Arjya, 3) Gopal Chauhan, 4) Bisheswar Chouhan, 5) Babita Chauhan, 6) Sabita Arjya, and 7) Paresh Das @ Paresh Chandra Das, 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.

17. It appears from the record that one Kamalabala Arjya has put her signature as one of the accused petitioners, but from the FIR, it reveals that the allegation was made against one Kamana Arjya, along with the aforesaid accused petitioners. On perusal of the Case Diary, it also reveals that one Kamana Arjya was implicated as an accused in the case. There is no document available in the record that the said "Kamana Arjya" and "Kamalabala Arjya" is one and the same person. Hence, in that view of the matter, the pre-arrest bail prayer made against Kamalabala Arjya is not accepted and the same is accordingly, rejected.

18. With the aforesaid observations and directions this Anticipatory Bail Application stands

disposed of.

19. Send back the Case Diary.

JUDGE

Comparing Assistant