

GAHC010026722023



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

**Case No. : AB/444/2023**

JAMAL BADSA MONDAL@JAMAL BADSA  
S/O NUR HOSSEN MONDAL,  
R/O VILL- SAPKATA, P.S. GOSSAIGAON, DIST. KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. M A MONDAL**

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

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**  
**ORDER**

**03.03.2023**

Heard Mr. M.A. Mondal, learned counsel for the applicant and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Gossaigaon P.S. Case No. 04/2023, under Sections 9/10/11 of the Prohibition of Child Marriage Act, read with section 4 of the POCSO Act, this application under Section 438 of the Code

of Criminal Procedure, 1973, is preferred by applicant, namely, Jamal Badsa Mondal @ Jamal Badsa for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R., lodged by one Hussain Ali, on 06.01.2023. The allegation leveled against the applicant in the FIR is that being the Kazi of No. 1 Sapkata Village, he had solemnized the marriage between Miss Jahanara Khatun aged 17 years and Md. Sukkur Ali of No. 1 Matiapara village.

4. Mr. Mondal, learned counsel for the applicant submits that the applicant is the Kazi of No. 1 Sapkata Village and he is no way involved with the offence alleged in the FIR. Mr. Mondal further submits that section 4 of the POCSO is not attracted against the present applicant and that he is ready to cooperate with the investigating agency, and therefore, Mr. Mondal contended to allow the petition.

5. On the other hand, Mr. Lahkar, learned Additional Public Prosecutor, has produced the case diary before this court and fairly submits that the section 4 of the POCSO Act is not attracted against the applicant. However, Mr. Lahkar submits that the section 11 of the Child Marriage Act, 2006 is attracted against him and the said offence is non-bailable offence, and therefore, Mr. Lahkar contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully perused the petition as well as the documents placed on the record and also perused the case diary with the assistance of Mr. Lahkar, learned Addl. P.P.

7. Indisputably section 4 of the POCSO Act, though the case has been

registered under the said section, is not attracted against the present applicant. The materials collected so far in the case diary seem to be inadequate to show that he had promoted solemnization of the marriage between Miss Jahanara Khatun and Md. Sukkur Ali. Besides, it appears from the case diary that the IO has examined several witnesses and achieved substantial progress in the investigation. And as such, custodial interrogation of the applicant in the interest of investigation seems to be unwarranted here in this case.

8. Accordingly, it is provided that in the event of arrest of the applicant, in connection with Gossaigaon P.S. Case No. 04/2023, under Sections 9/10/11 of the Prohibition of Child Marriage Act read with section 4 of the POCSO Act, he shall be enlarged on interim pre-arrest bail on executing a bond of Rs. 25,000/- (Rupees twenty-five thousand) only with one surety of like amount to the satisfaction of the arresting authority.

9. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make himself available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant 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

(iii) that the applicant shall not leave the jurisdiction of the learned Special Judge, POCSO Act, Kokrajhar, without prior permission.

10. In terms of above, this AB stands disposed of.

11. The case diary be returned.

**JUDGE**

**Comparing Assistant**