

GAHC010036082023



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

Case No. : Bail Appln./594/2023

MONIR HUSSAIN
S/O ABDUL HAMID
VILL- PALHAZI AMIN PARA
P.O.PALHAZI, P.S. AND DIST. BARPETA, ASSAM, PIN-781309

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02-03-2023

Heard Mr. K. Bhuyan, learned counsel for the petitioner as well as Mr. R.J. Baruah, learned APP for the State.

2. The petitioner, namely, Monir Hussain who was arrested on 03.02.2023, is seeking regular bail under section 439 Cr.P.C. in connection with

Hatigaon P.S. Case No. 35/2023, under sections 376 IPC read with sections 9/10/11 of Protection of Child Marriage Act read with section 6/17 of POCSO Act.

3. The learned APP has produced the case diary and has opposed the prayer for bail.

4. On a perusal of the case diary, the only impression that the Court could gather is that the IO has miserably failed in conducting a proper investigation in the matter. It appears that he had acted mechanically without any application of mind which is not at all expected from an IO.

5. As per the FIR which was registered as Hatigaon P.S. case no.35/2023, the informant had clearly disclosed that the main accused Jalal Uddin, son of Ibrahim Ali had married a minor girl. However, in the forwarding report of the IO dated 03.02.2023, in the ground of arrest, Jalal Uddin, son of Ibrahim Ali is referred to as the FIR named accused no.1 and the forwarded accused no.2 is reflected as the father of the prime accused. Therefore, the IO does not even know whom he is arresting and he has made no effort to find out the relationship of the petitioner with the purported minor bride and the groom. In the entire case diary, there is no clarity as to who is the present petitioner is. It is only from the blank PR bond which bears right hand thumb impression of the minor girl along with the mother of the victim girl, it can be noted that the name of the mother is Monjela Khatun, wife of Monir Hussain. Only from there it transpires that the present petitioner is not the father of the purported groom

but is the father of the victim girl.

6. The FIR itself discloses that the victim girl had eloped with the accused person due to her poor financial condition. Under such circumstances, it is apparent that the petitioner namely, Monir Hussain has no involvement in the elopement of his daughter with the purported groom. Accordingly, the Court finds that the further custodial interrogation of the petitioner may not be necessary.

7. Hence, the Court is inclined to release the petitioner, namely, Monir Hussain, on bail on furnishing a bail bond of Rs.50,000/- (Rupees fifty thousand only) with one surety of like amount to the satisfaction of the learned Special Judge (POCSO), Kamrup (Metro), Guwahati.

8. Bail is granted on the following conditions:

- a. The petitioner shall appear before the Court in the present case on all the dates fixed for trial.
- b. 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 to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
- c. The petitioner shall not obstruct the smooth progress of the trial/ investigation.
- d. The petitioner shall not misuse his liberty in any manner.

- e. The petitioner shall not jump over the bail.
- f. The petitioner shall once again appear before the IO once in 15(fifteen) days and he shall continue to appear once a month till his personal appearance is dispensed with or charge sheet is submitted, whichever is earlier.

9. The learned APP shall transmit a downloaded copy of the order to the Director General of Police, Assam to bring to his notice about the perfunctory and mechanical manner in which the investigation of this case is being carried out, which involves offence under the provisions of POCSO Act.

10. The application stands disposed of.

JUDGE

Comparing Assistant