

GAHC010037572023



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

Case No. : AB/595/2023

KURAN ALI @ RAJU KHAN
S/O HABIBUR RAHMAN
R/O VILL- PATAKATA (PART-II) P.S. GOURIPUR (ATHANI OUT POST)
DIST. DHUBRI, ASSAM,
PIN- 783331

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H BEZBARUA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 21-03-2023

Heard Mr. S.J. Sharma, learned counsel for the petitioner and Mr. B. Sharma, 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. Kuran Ali @ Raju Khan has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Fatasil Ambari Police Station Case no. 209/2022, registered initially for the offence under Section 366, Indian Penal Code [IPC], for the second occasion after rejection of the petitioner's previous pre-arrest bail application, A.B.

no. 3413/2022 by an order dated 16.12.2022 after perusal of the materials available in the case diary, produced on that date by the learned Additional Public Prosecutor.

3. The First Information Report [FIR] was lodged before the Officer In-Charge, Fatasil Ambari Police Station on 24.09.2022. In the FIR, the informant has stated that her minor daughter had gone out to appear in examination at around 12.30. p.m. on 24.09.2022 and though the examination was over at 03.00 p.m., the minor daughter of the informant did not return to her house on that day. It is mentioned that it was learnt from different sources that the petitioner had deceitfully taken the minor daughter of the informant to some place.

4. When the earlier pre-arrest bail application was considered on 16.12.2022, this Court, after perusal of the materials in the case diary, had found the petitioner to be 28 years of age. The minor daughter of the informant, who was allegedly kidnapped, was found to be 14 years of age as her date of birth of is 14.12.2008. The Birth Certificate of the minor daughter was part of the case diary. In the case diary, the statement of the minor daughter of the informant, recorded under Section 164, CrPC, was also available. Upon perusal of the said statement recorded under Section 164, CrPC, this Court had recorded that in her statement, the minor victim had clearly implicated the petitioner. In her statement, the victim had stated that it was the petitioner, who had asked the victim to go with him and in the night following the date of kidnapping, the petitioner established physical relationship with the minor daughter against her will. The petitioner was also found out to be a married person.

4.1. The Investigating Officer [I.O.] of the case in the course of investigation, made a prayer before the learned jurisdictional court on 29.10.2022 to add the offences under Section 376[3], IPC r/w Section 4 of the Protection of Children from Sexual Offences [POCSO] Act, 2012 and the learned jurisdictional court after perusal of the case records and considering the grounds submitted by the I.O., had, by order dated 29.10.2022, added the offences under Section 376[3], IPC r/w Section 4 of the POCSO Act, 2012 to Fatasil Ambari Police Station Case no. 209/2022.

5. In the instant application, the petitioner has contended that since the month of

December, 2022, the petitioner has been suffering from nasal bleeding and when he consulted specialist doctor, he was advised rest. The petitioner has further averred that there is possibility of lung infection, as per the X-Ray report.

6. 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. The grounds cited in this second application on behalf of the petitioner do not appear to be of any substance for reconsideration of the earlier order dated 16.12.2022 passed in A.B. no. 3413.

7. Having gone through the grounds on which the previous pre-arrest bail application, A.B. no. 3413/2022, was rejected; considering the fact that the offences under Section 376[3] r/w Section 4 of the POCSO Act have been added in the meantime; and the ground urged in the instant pre-arrest bail, preferred for the second occasion, this Court has not found any good and sufficient ground for reconsideration of the earlier order dated 16.12.2022 passed in A.B. 3413/2022. As the instant application is found devoid of merit, the same is liable to be rejected and it is accordingly rejected.

JUDGE

Comparing Assistant