

GAHC010037762023



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

Case No. : Bail Appln./650/2023

ABUL KALAM AZAD
S/O LT. UMED ALI
VILL- BAMUNPARA
P.S. BILASIPARA
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 20.03.2023

Heard Mr. H. R. A. Choudhury, learned senior counsel for the petitioner. Also heard Mr. R. J. Boruah, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Abul Kalam Azad**, has prayed for grant of bail in connection with **Bilasipara P.S. Case No. 75/2023** under Sections **9/10/11(1)** of Prohibition of Child Marriage Act read

with Section **4/17** of POCSO Act.

The Case diary, as called for, is placed before the Court.

Mr. H. R. A. Choudhury, learned senior counsel appearing for the accused petitioner, submits that the accused has been on interim bail by order of this Court, dated 27.02.2023 and till date he has complied with the relevant conditions of it. Mr. Choudhury further submits that the accused is not the father of any name mentioned in the FIR, but the paternal uncle of the daughter of accused Abdus Salam, who is regularly attending her classes and residing in her parents' house and that her marriage was not solemnized yet. Mr. Choudhury, therefore, submits that the accused being absolutely innocent, his interim bail may be made absolute.

Per contra, Mr. R. J. Boruah, learned Addl. Public Prosecutor, submits that the date of birth of the victim woman is 12.07.2006 and in her statement under Section 161 Cr.P.C., she has implicated the present accused petitioner, who is her uncle, stating that he and her father gave her in marriage against her wish in presence of the members of both the families in the month of November/December, 2022. She has another name. She has refused medical examination. Mr. Boruah further submits that the Headmaster of her school has stated that the victim is a minor girl and read in Class VIII and further, that for last 3/4 months, she has not been attending classes.

The FIR reveals the allegation that the father of the victim gave marriage of his minor daughter, aged about 16 years, to one Kalu.

It is noticed that a co-ordinate Bench granted interim bail to the accused petitioner vide order, dated 27.02.2023.

In terms of the conditions of the interim bail, the accused petitioner appeared before the Investigating Officer and has given his statement under Section 161 Cr.P.C.

There is abundance of prima facie incriminating material against the accused petitioner indicating that he along with another forcibly caused solemnization of

marriage of the victim girl child, aged below 18 years. However, only on the ground that he has been co-operating with the Investigating Officer and in the backdrop of facts and circumstances, as a whole, this Court sees no justifiable reason for custodial interrogation of the petitioner, who is on interim bail. There is no adverse report that he has committed breach of any of the conditions of the interim bail.

For the above stated reasons, the interim bail granted to the accused petitioner vide order, dated 27.02.2023, is hereby made **absolute**, subject to the following conditions-

- (i) That the accused petitioner shall co-operate in investigation as and when required; and
- (ii) That the accused 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 the Court or to any police officer; and
- (iii) That the accused petitioner shall refrain from committing any similar offence(s) in future, of which he is suspected of commission.

Any breach of the above conditions shall render cancellation of the bail in accordance with law.

Return the case diary.

This disposes off the anticipatory bail application.

JUDGE

Comparing Assistant