

GAHC010037932023



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

Case No. : Bail Appln./636/2023

ABDUS SAMAD KAZI
S/O BARKATULLAH MUNSHI,
VILL- CHARUABHITA, P.S. SAPATGRAM, DIST. DHUBRI, ASSAM
PIN-783337.

VERSUS

THE STATE OF ASSAM
REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR. A S TAPADER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 03-03-2023

Heard Mr. H. R. A. Choudhury, learned Senior counsel, assisted by Mr. M. Ahmed, learned counsel for the accused/applicant. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Abdus Samad Kazi, who has been languishing in jail *hajot* since 04.02.2023, in connection with Sapatgram

PS Case No.15/2023, under Sections 9/10/11(1) of Prohibition of Child Marriage Act read with Section 17 of the POCSO Act, 2006.

3. It is to be noted that the above noted case has been registered on the basis of an FIR, lodged by one Hafijur Rahman on 03.02.2023. The allegation levelled against the accused in the FIR is that he had solemnised marriage of one minor girl, namely, Smti 'X' (name withheld), aged 15 years, with an adult person, namely, Nur Jamal Sk @ Nur Islam Sk, and he has been solemnizing child marriage within the jurisdiction of Sapatgram Police Station since 2017.

4. Mr. Choudhury, learned Senior counsel for the accused, submits that the accused is behind the bar for the last 21 days and though it is alleged in the FIR that the accused was working as *Kaji*, in fact, he is not a *Kaji*; rather he was working as an assistant to *Sadar Kaji*, in maintaining records and he has no criminal antecedent and he is ready to cooperate with the investigation and, therefore, it is contended to allow the application.

5. On the other hand, Mr. Baruah, learned Additional Public Prosecutor, Assam submits that the I/O has collected sufficient materials against the accused. However, he submits that the investigation is about to complete.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Baruah, learned Additional Public Prosecutor, Assam.

7. It appears that the accused has been languishing in jail *hajot* since 04.02.2023. Further, it appears that the materials part of the investigation is almost over and in view of the materials collected so far in the case diary, further custodial detention of the accused seems to be not warranted here in

this case, in the interest of investigation and, accordingly, this Court is inclined to allow the petition.

8. It is provided that on furnishing a bond of Rs. 25,000/- (Rupees Twenty Five Thousand) only, with one surety of like amount to the satisfaction of the learned Special Judge, POCSO, Bilasipara, the accused namely, Abdus Samad Kazi, be enlarged on bail, in connection with Sapatgram PS Case No.15/2023, under Sections 9/10/11(1) of Prohibition of Child Marriage Act read with Section 17 of the POCSO Act, 2006.

9. In terms of above, this bail application stands disposed of.

The case diary be returned.

JUDGE

Comparing Assistant