GAHC010038052023

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

Case No. : Bail Appln./667/2023

SER ALI
S/O LATE ABDUL MOZID R/O VILL- GASBARI
P.S. MANKACHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:NAYEB ALI
S/O LATE ZOBED ALI
R/O VILL- GASBARI PS.MANKACHAR
DIST. SOUTH SALMARA MANKACHAR ASSA

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 09.03.2023

Heard Mr. S. C. Biswas, learned counsel appearing for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Ser Ali,** has prayed for grant of bail in connection with **Mankachar P.S. Case**

No.74/2023 under Sections **9/10/11** of Prohibition of Child Marriage Act, read with Section **6/17** of POCSO Act corresponding to G.R. No. 123/2023.

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

Mr. Biswas, learned counsel for the petitioner, submits that the accused has been in judicial custody since 03.02.2023, i.e. for 36 days and the father of the victim girl has sworn an affidavit stating that at the time of his daughter's marriage, she was major, i.e. attained the age of 18 years and, accordingly, his daughter's (the victim) marriage was solemnized with the accused petitioner on 08.06.2022 as per Islamic Shariat.

Mr. B. Sarma, learned Addl. Public Prosecutor, Assam, per contra, submits that in the FIR, the age of the victim woman is mentioned as below 18 years (aged about 17 years) at the time of her marriage.

The FIR reveals the allegation of marrying a girl, who was below the age of 18 years, with the accused petitioner.

It is noticed that the accused petitioner has been in judicial custody for 36 days.

The case prima facie falls within Exception 2 of Section 375 of the IPC.

It is surprising that although the case was filed on 02.02.2023, the statement of the victim woman has not been recorded either under Section 161 or 164 Cr.P.C.

After consideration of the facts and circumstances as emerged from the case diary, this Court is of the considered opinion that further continuation of detention of the accused in the interest of investigation is not warranted.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 25,000/-** with one surety of like amount to the satisfaction of the **learned Special Judge (POCSO Act), Hatsingimari, South Salmara,**

Mankachar subject to the following conditions-

i) That the accused petitioner shall cooperate with the Investigating Officer 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 Police Officer or the Court.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant