

GAHC010040072023



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

Case No. : AB/640/2023

BASER ALI
S/O SOMER ALI
R/O PIAR BAZAR
P.S. ABHAYPURI
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MD R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

15.03.2023

Heard Mr. R. Ali, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam for the State.

2. This anticipatory bail application has been filed by the petitioner namely,

Baser Ali apprehending arrest in connection with Abhayapuri P.S. Case No. 58/2023 under Sections 9/10/11 of the Child Marriage Act, read with Sections 6/17 of POCSO Act, 2012.

3. An FIR dated 02.02.2023 was lodged by the informant one Samsul Hoque who is an UBC/73 Police Constable of Lengtisinga Observation Post, P.S. Abhayapur, District- Bongaigaon. It was alleged in the FIR that the petitioner in collaboration with the other family members had solemnized marriage with one Rinki Khatun who is about 16 years of age.

4. The learned counsel for the petitioner has denied the allegations that he has solemnized social marriage with the victim girl, namely Rinki Khatun @ Salma Khatun daughter of Kasem Ali. The learned counsel for the petitioner submits that the family members of both the petitioner and the girl merely agreed that when the victim girl attains her majority, the family members/the guardian will arrange a social marriage as per provision of law for them. It is further denied that the girl and the petitioner are living together as husband and wife. The learned counsel for the petitioner submits that the girl or her guardian did not file any case or lodged an FIR against the petitioner but the informant who is a Constable in the Lengtisinga Observation Post had lodged this FIR for harassing the petitioner and his family members. The learned counsel for the petitioner submits that the petitioner had no knowledge about the incident and that he has been falsely implicated in this case.

5. This Court vide order dated 28.02.2023 directed the case diary to be produced.

6. The learned Addl. Public Prosecutor, Assam has produced the case diary today before the Court.

7. The learned counsels for the parties have been heard. The anticipatory bail petition has been perused. The case diary presented before the Court has also been perused.

8. From the case diary, it is seen that the girl had recorded her statement under Section 164 Cr.P.C. In her statement, she stated that she was having an affair with the petitioner for about three years and that she had eloped with the petitioner and had solemnized marriage with the petitioner at Guwahati while she was below 18 years. The marriage was solemnized by one Jonab whose name she does not know. It is further stated that the petitioner had brought her to his ancestral house after spending about 15 days in Guwahati and that the marriage was consummated and a result of which she is now about 7 months pregnant. From the case diary, it is also seen that the girl had refused medical examination when she was produced before the CHC (FRU) as per the endorsement of Sr. Medical and Health Officer.

9. Upon perusal of the case diary, it is seen that the victim girl had clearly implicated the petitioner which is contrary to his statement made in the bail petition.

10. Considering the statements made by the petitioner and also upon perusal of the case diary, this Court does not consider this to be a fit case for grant of anticipatory bail, as prayed for by the petitioner, at this stage.

11. Accordingly, the anticipatory bail application stands dismissed.

12. Return the case diary.

JUDGE

Comparing Assistant