

GAHC010044822023



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

Case No. : Bail Appln./794/2023

RABIYAL ALI @ RABIAL ALI AND ANR
S/O SUKUR ALI
R/O SUNTALI, SELUSATI
P.S. BOKO
T/A- BHETAPARA, BARNALI PATH
P.S. HATIGAON,
GUWAHATI-38,
DIST. KAMRUP (M), ASSAM

2: MANOWARA BEGUM
W/O JUNAB ALI
R/O VILL- SUNTALI
P.O. SUNTALI
P.S. BOKO
DIST. KAMRUP (R)
ASSAM
C/A- BHETAPARA
BARNALI PATH
P.S. HATIGAON
GUWAHAT-38
DIST. KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A L RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA
ORDER

15.03.2023

Heard Mr. M. Rahman, learned counsel for the petitioners. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the State.

2. This application, under Section 439 Cr.PC, is preferred by the petitioners, namely, Rabiya Ali @ Rabia Ali and Manowara Begum, who have been arrested in connection with Hatigaon Police Station Case No.25/2023 registered under Section 376 IPC read with Section 09 of Prohibition of Child Marriage Act, 2006 read with Section 4 of POCSO Act. The petitioners were arrested on 26.01.2023.

3. An FIR dated 25.01.2023 was lodged by one Nazira Begum before the Officer-in-Charge, Hatigaon Police Station, Guwahati alleging physical torture and harassment as well as domestic violence on the informant. It was further alleged that the accused persons forced her to drop pregnancy resulting miscarriage. It was also alleged that the informant was forced to marry the petitioner No.1 on 9th June, 2022. Because of continuous physical abuse and harassment as well as life threats issued by the accused persons, the informant managed to escape from the clutches of the accused persons and lodged the FIR, which was registered as Hatigaon Police Station Case No.25/2023 under Section 376 IPC read with Section 09 of Prohibition of Child Marriage Act, 2006 read with Section 4 of POCSO Act.

4. Pursuant to the investigation initiated after receipt of the FIR, the petitioners were arrested on 26.01.2023.

5. According to learned counsel for the petitioners, the petitioner No.1 and the informant were legally married and their marriage was registered under

Muslim Marriages & Divorces Registrar & Kazi, Mahtoli (Sontoli). In this regard, learned counsel for the petitioners has referred to a certificate, which is enclosed as Annexure-III at page 16. The said marriage was shown to be registered on 04.02.2022 in presence of the witnesses. A birth certificate issued by the Registrar of Births and Deaths has also been produced, which shows the date of birth of the informant to be 27.10.2001 on the basis of which learned counsel for the petitioners submits that the informant is not a minor and, therefore, the provisions of Prohibition of Child Marriage Act, 2006 and POCSO Act are not applicable.

6. Learned counsel for the petitioners submits that the petitioners have been in custody since their date of arrest and, therefore, they are entitled to be released on bail.

7. This Court vide order, dated 09.03.2023, directed the learned Additional Public Prosecutor, Assam to produce the Case Diary along with medical report and statement under Section 164 Cr. PC on the next date fixed. Pursuant to the said order, learned Additional Public Prosecutor, Assam has produced the same before this Court.

8. Learned counsel for the parties have been heard. The pleadings and the petition have been perused.

9. From the Case Diary, it is seen that the informant has made specific allegations against the petitioner No.2 in respect of miscarriage that was suffered by her at the instance of the petitioners. The opinion of the doctor available in the Case Diary suggests that the age of the informant/victim is about 15 years.

10. Learned Additional Public Prosecutor, Assam has submitted that since the matter is at the stage of investigation, the petitioners cannot be released on bail.

11. Having heard learned counsel for the parties and upon due consideration of the materials produced before this Court, this Court is of the view that in view of the gravity of the allegations made against the petitioners and also taking into account the progress of investigation, the prayer for release of the petitioners at this stage cannot be considered to be conducive for the investigation which is being carried on by the police. Moreover, there are sufficient incriminating materials against the petitioners as is revealed from the Case Diary.

12. Accordingly, the prayer for bail made by the petitioners is rejected at this stage.

13. The Bail Application is accordingly dismissed.

14. Case Diary be returned back.

15. The Investigating Officer is, however, directed to expedite the investigation and bring it to its logical end.

JUDGE

Comparing Assistant