

GAHC010047202023



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

Case No. : AB/734/2023

PAPUL ALOM
S/O LATE ROFIQ UDDIN
VILL- CHARING PATHER, P.O. CHARING
P.S. MURAJHAR,
DIST. HOJAI, ASSAM
PIN-782439

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M K HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

03.03.2023

Heard Mr. M. K. Hussain, the learned counsel for the applicant
and Mr. B.Sarma, the learned A.P.P. appearing on behalf of the State
of Assam.

This is an application under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the applicant, namely, Sri Papul Alom. At the outset it is relevant to state that the applicant has approached this Court seeking pre-arrest bail without any FIR lodged against him. The reason however for approaching this Court is on the basis of the apprehension that he may be arrested on the basis of commission of an offence under the provisions of the Prohibition of Child Marriage Act, 2006 (for short, the 'Act of 2006'). The apprehension of the petitioner is based upon a list being circulated in the local Panchayat wherein the petitioner's name had also been included.

It is the case of the applicant that the applicant married Janifa Wahid Choudhury on 20th of July, 2022. At the time of the marriage, the applicant was 20 years 9 days and his wife's was 19 years 1 month 10 days.

Taking into account the provisions of the Prohibition of the Child Marriage Act, 2006 and the Protection of Children from Sexual Offences Act, 2012, the case of the applicant is that the wife of the applicant was of the marriageable age. However, the applicant having not completed 21 years was not of marriageable age.

The learned counsel for the applicant has drawn the attention to the judgment of the Supreme Court in the case of Hardev Singh and Vs. Harpreet Kaur and Ors. dated 7th of November, 2019 in CrI. A. No. 1331/2013 wherein the Supreme Court at paragraph No. 3.8 had observed that Section 9 of Prohibition of

Child Marriage Act, 2006 has to be viewed in the backdrop of the gender dimension to the practice of child marriage. It was observed that nowhere from the discussion it could be gleaned that the legislators sought to punish a male between the age of eighteen and twenty one years who contracts into a marriage with a female adult. Instead, the 2006 Act affords such a male, who is a child for the purposes of the Act, the remedy of getting the marriage annulled by proceeding under Section 3 of the Act of 2006. It is under circumstances that the Supreme Court in the said judgment taking into account that the parties were happily married and they were not facing any threat from their family members had quashed the First Information Report.

Taking into account the law laid down by the Supreme Court in the case of Hardev Singh (Supra), this court is also of the opinion that the applicant cannot be held to be an offender in terms with the provisions of Prohibition of Child Marriage Act, 2006. Accordingly, this Court therefore directs that in the event the applicant is arrested as having offended the provisions of the Act of 2006, he may be enlarged on bail on furnishing bail bond of Rs. 10,000/- with one surety of like amount to the satisfaction of the arresting authority subject to the following conditions:

1. The applicant shall appear before the I.O. along with his wife for recording their statement and shall co-operate with the investigation of the case as and when necessary.
2. The applicant 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/her from disclosing such facts to the court or to any police officer.

3. The applicant shall not hamper with the investigation of the case and tamper with the evidence.

4. The applicant shall not leave the jurisdiction of the Additional Chief Judicial Magistrate, Hojai without his permission, upon availing the benefits in terms with the instant order.

It is however clarified that the instant order is passed on the basis and taking into account the specific statement that the Applicant's wife was an adult in terms with the Act of 2006. In the eventuality, that the statement is incorrect, the State would be at liberty to file application before this Court for cancellation of the instant order of pre-arrest bail.

With the above observations and directions, the instant petition stands disposed of.

JUDGE