

GAHC010050062023



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

Case No. : AB/968/2023

SAIFUL ISLAM SK
S/O- ASMAT ALI SK, R/O-VILL TENGNERBHITA ,P.O- TULSIBIL, P.S-
GOSSAIGAON, DIST- KOKRAJHAR, BTR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

23.05.2023

Heard Mr. A.A.R. Karim, learned counsel for the accused and Mr. K.K. Parasar, learned Addl. P.P. for the State respondent.

2. Apprehending arrest in connection with Gossaigaon P.S. Case No. 118/2022, under Sections 9/10/11 of Prohibition of Child Marriage Act read with

section 4 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Saiful Islam Sk. for grant of pre-arrest bail.

3. The said case has been registered on the basis of an FIR lodged by Chairperson, Child Welfare Committee, Kokrajhar on 25.03.2022, to the effect that on 18.03.2022 one minor girl Smti X [name withheld] aged 17 years 1 month was forcefully taken to the house of Saiful Islam Sk. by Jasmat Ali Paramanik, Abdulal Paramanik, Arman Ali Sk. And Johar Paramanik and her marriage was forcefully solemnized with Saiful Islam Sk. and she was forced by Saiful Islam Sk. to have physical relationship with him thice.

4. Mr. Karim, learned counsel for the accused submits that this is the second anticipatory bail application preferred by the applicant and earlier one, being AB No. 2623/2022, was rejected by this court vide order dated 23.11.2022, after perusing the case diary. Mr. Karim further submits that this second anticipatory bail application is preferred on the ground that the occurrence took place on 18.03.2022 and at the relevant point of time the victim was minor and thereafter, she has attained majority and she has executed one manias agreement with one Saiful Islam, with whom she had love relation. Mr. Karim further submits that the applicant is ready to cooperate with the investigating agency and also ready to face trial, and therefore, it is contended to allow the petition.

5. On the other hand Mr. Parasar, learned Addl. P.P. has vehemently opposed the petition on the ground that after completion of investigation the IO has laid charge sheet against the present applicant by showing him as

absconder in the charge sheet, to stand trial in the court, under sections 9/10/11 of Prohibition of Child Marriage Act read with section 6 of the POCSO Act, and the offences are serious in nature and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. It appears that the applicant has been charge sheeted, showing as absconder, to stand trial in the court, under sections 9/10/11 of Prohibition of Child Marriage Act read with section 6 of the POCSO Act. It is not in dispute that at the relevant point of time the age of the victim was below 18 years and as such, she was a 'child' as defined in section 2[b] of the POCSO Act, at that time. Subsequent attainment of majority and executing one agreement for getting married with another person, to the considered opinion of the court would not absolve the petitioner from the offences, in which charge sheet has been submitted against him.

8. Having regard to the materials available on the record of the learned court below and also having regard to the nature and gravity of the offence, as well as the submissions advanced at the bar, this court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the present accused/applicant.

9. Accordingly the petition stands dismissed.

10. The applicant shall surrender before the learned court below, within a period of 15 [fifteen] days from today.

JUDGE

Comparing Assistant