

GAHC010050302023



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

Case No. : AB/793/2023

ABDULLA AL AMIN AND ANR
S/O- ROFIQUL ISLAM, R/O- HATIPOTA PART-II, P.S. BILASIPARA, DIST.-
CHAPAR (ASSAM)

2: ROFIQUL ISLAM
S/O- LT. FAZLUL HOQUE
R/O- HATIPOTA PART-II
P.S. BILASIPARA
DIST.- CHAPAR (ASSAM)

VERSUS

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

2:ZAKIR HUSSAIN
S/O- EMAN ALI
R/O- KAZIPARA PART-II
P.S. CHAPAR
DIST.- DHUBRI (ASSAM)

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

08.05.2023

Heard Mr. H.R.A. Choudhury, learned Sr. Counsel appearing for the

petitioners. Also heard Mr. R.J. Baruah, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioners, namely **1) Abdulla Al Amin and 2) Rofiqul Islam**, apprehending arrest in connection with **Chapar P.S. Case No. 86/2023** registered under Sections **366/376(2)(n)** of the IPC read with Section **4** of the POCSO Act, 2012 and Sections **9/10/11(1)** of the Prohibition of Child Marriage Act, 2006.

It may be mentioned that vide order, dated 15.03.2023, this Court granted the privilege of interim pre-arrest bail to the petitioner No. 2 subject to conditions.

The FIR reveals the allegation that on 14.04.2022, the petitioner No.1 gave proposal of marriage to the minor daughter of the informant, which was rejected by the informant considering her age. It is alleged that on 20.10.2022, while the informant's daughter was returning from school, the petitioner No.1 forcefully took her away in a car. The informant and his family members searched for the victim at various places and finally, on 22.10.2022 they found her at the rented house of the petitioners. As per allegation, the petitioners forcefully took signatures of the informant in blank paper as well as in Kabin Nama. It is also alleged that the petitioner No.1 committed rape on the victim on 20.10.2022 and 21.10.2022 and took some objectionable photographs and videos of the victim with his mobile phone, which he threatened to make viral if the informant disclosed the incident to anyone. The petitioner No. 1 with the help of the petitioner No. 2 solemnized marriage on 22.10.2022 as per Islamic Shariat through a Kazi.

Mr. R.J. Baruah, learned Addl. Public Prosecutor, submits that the case diary shows that the date of birth of the victim is 23.02.2005 and the marriage was solemnized on 22.10.2022. At the time of marriage, the victim was aged about 17 years 8 months. In terms of the interim pre-arrest bail, granted earlier, the petitioner No. 2 has appeared before the I.O. and got his statement recorded under Section 161 Cr.P.C.

The medical report shows no sign of injury on the person of the victim.

In the backdrop of facts and materials available on the case diary, this Court is of the opinion that custodial interrogation of the petitioners may not be required in the interest of the ongoing investigation into the case.

Accordingly, the interim pre-arrest bail order, dated 15.03.2023, granted to the petitioner No.2 is hereby made absolute subject to the following conditions-

- (i) That the petitioner No. 2 shall co-operate in investigation as and when required; and
- (ii) That the petitioner No. 2 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 Court or to any police officer.

In respect of the petitioner No. 1, it is provided that in the event of arrest, he shall be released on pre-arrest bail, in connection with the above noted case on furnishing bail bond of **Rs. 25,000/- (Rupees Twenty Five Thousand)** with one surety of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:

- (i) That the petitioner No. 1 shall appear before the

Investigating Officer within 7 days, failing which, on and from the 8th day, this pre-arrest bail order shall automatically come to an end; and

- (ii) That the petitioner No. 1 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 Court or to any police officer.

Return the case diary.

This disposes off the anticipatory bail application.

JUDGE

Comparing Assistant