

GAHC010064542023



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

Case No. : AB/1102/2023

ISHTIAQUE HUSSAIN MAZUMDER @ TERA MIA
S/O- LT. ISHAK ALI MAZUMDER,
VILLAGE- RANGAUTI PART-I,
P.O.-RANGAUTI, P.S. AND DISTRICT- HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

27/06/2023

Heard Mr. A M Barbhuiya, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State.

Mr. A H M R Choudhury, learned counsel has appeared on behalf of the complainant and assisted Mr. B Sarma, learned Additional Public Prosecutor, Assam.

The petitioner, namely, **Ishtiaque Hussain Mazumder @ Tera Mia**, has filed this application under Section 438 Cr.P.C. seeking pre-arrest bail apprehending his arrest in **Hailakandi P.S. Case No. 48/2023** registered under Sections 354(B)/506 IPC read with Section 8 of POCSO Act, 2012 corresponding to G.R. No. 201/2023 and Special (POCSO) Case No. 111/2023.

Perused the case diary placed before the Court today by Mr. Sarma, learned Additional Public Prosecutor, Assam.

The petitioner stated that he is about 77 years old and in that regard, he has annexed his Aadhar Card showing his date of birth as 1st January, 1947.

As per the FIR of the case lodged on 27.02.2023, while the petitioner was sick and bed ridden, the complainant and his family members looked after him and on the request of the petitioner, the daughter/victim of the complainant used to visit the house of the petitioner for cooking purpose since there was good relation between the petitioner and the complainant. On 13.02.2023, the victim after completing the works at the house of the petitioner at night around 9:00 PM was molested by the petitioner and made an attempt to have physical relation with her, tearing her frock and undergarments.

Accordingly, said FIR was registered as Hailakandi P.S. Case No. 48/2023 under Sections 354(B)/506 IPC read with Section 8 of POCSO Act, 2012 corresponding to G.R. No. 201/2023.

Later, said Hailakandi P.S. Case No. 48/2023 has been registered as Special (POCSO) Case No. 111/2023.

By order dated 24.03.2023, the Court granted interim bail to the petitioner in said Hailakandi P.S. Case No. 48/2023/ Special (POCSO) Case No. 111/2023 pursuant to which he appeared before the concerned Investigating Officer of the case.

Perused the statement of the minor victim recorded under Section 164 Cr.P.C. on 03.03.2023 by the learned Judicial Magistrate, First Class, Hailakandi in which the minor victim aged about 16 years implicated the petitioner with regard to his forceful physical attempt made by him on the night of 13.02.2023 at his residence.

From the case diary, it is seen that the note of the Investigating Officer clearly reveals that after obtaining interim bail in said Hailakandi P.S. Case No. 48/2023, the accused person, i.e., the

petitioner herein and his associates threatened the complainant and his family members to face the dire consequences unless the said complainant withdraws the case clearly informing him that otherwise the accused and his associates will kill the complainant and shall also harass him by lodging false allegation. In that regard, a Non-FIR case under Section 107 Cr.P.C. vide Hailakandi P.S. Non FIR Case No. 56/2023 dated 25.05.2023 has been registered against the petitioner. In the particular notes, the Investigating Officer of the case provided that though in the said order dated 24.03.2023, there is a specific condition that he will 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, but after releasing the petitioner on interim bail in said Hailakandi P.S. Case No. 48/2023, the petitioner and his associates are indulged in such acts, threatening the complainant and his entire family member including the minor victim.

Considering the statement of the minor victim recorded under Section 164 Cr.P.C. and the materials available in the case diary against the petitioner with regard to his involvement in the alleged crime, the Court is of the view that it is not a fit case to grant pre-arrest bail to the petitioner, namely, Ishtiaque Hussain Mazumder @ Tera Mia in said Hailakandi P.S. Case No. 48/2023.

Accordingly, this pre-arrest bail application of the petitioner, Ishtiaque Hussain Mazumder @ Tera Mia in said Hailakandi P.S. Case No. 48/2023 stands rejected.

The interim pre-arrest bail granted to the petitioner, Ishtiaque Hussain Mazumder @ Tera Mia earlier on 24.03.2023 in said Hailakandi P.S. Case No. 48/2023 is hereby recalled/stands vacated.

Return the case diary.

JUDGE

Comparing Assistant