

GAHC010099552023



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

Case No. : AB/1684/2023

BANESA KHATUN AND ANR
W/O MAHIDUL ISLAM
VILL- MARICHA PATHAR
P.O. KHARADHARA
P.S. AND DIST. BARPETA, ASSAM
PIN-781309

2: MAYURJAN NESSA
W/O HASEN ALI
VILL- MARICHA PATHAR
P.O. KHARADHARA
P.S. AND DIST. BARPETA
ASSAM
PIN-78130

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

23/06/2023

Heard Mr. R Islam, learned counsel for the petitioner and Mr. P S Lahkar, learned Additional Public Prosecutor, Assam for the State.

The petitioners, namely, **(1) Banesa Khatun** and **(2) Mayurjan Nessa**, have filed this application under Section 438 Cr.P.C. seeking pre-arrest bail apprehending their arrest in **Barpeta P.S. Case No. 192/2023** registered under Sections 365/34 IPC.

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

As per the FIR of the case lodged by the complainant on 10.04.2023 that on 09.04.2023 in the evening around 5/6 PM, his minor daughter was forcefully taken away from the premises of his house and after a thorough search during night, the complainant came to know that the accused persons kidnapped his daughter and confined her in some unknown place.

Accordingly, Barpeta P.S. Case No. 192/2023 under Sections 365/34 IPC was registered against the petitioner.

Mr. P S Lahkar, learned Additional Public Prosecutor, Assam from the case diary submitted that the victim was recovered and in her 164 Cr.P.C. statement recorded by the learned Judicial Magistrate, First Class, Barpeta on 26.04.2023 implicated the petitioners that they closed her face by a cloth and forcefully put her in a motor cycle driven by one Hasibul Ali, whose name she came to know while some of the accused called him. In her 164 Cr.P.C. statement, the victim also stated that said Hasibul Ali had physical relation with her on the night.

From the case diary, it is seen that the victim refused to go for any kind of medical examination. The statement of the witnesses so far recorded by the concerned Investigating Officer of the case as well as the note of the Investigating Officer reflect that said Hasibul Ali had an affair with the victim since long and he was a frequent visitor to the house of the complainant. Though, the complainant in her 164 Cr.P.C. statement implicated the petitioners but none of the witnesses in their statements implicated both the petitioners and no one saw regarding any such kidnapping of the

victim by the present petitioners.

Considering the materials available in the case dairy, the Court is of the view that custodial interrogation of the petitioners, named above, is not warranted to investigate the said Barpeta P.S. Case No. 192/2023. As such, this pre-arrest bail application of the petitioners is accepted.

Accordingly, in the event of arrest of the petitioners, namely, **(1) Banesa Khatun** and **(2) Mayurjan Nessa**, in said Barpeta P.S. Case No. 192/2023, they shall be released on bail on furnishing a bail bond of Rs.50,000/- each, with 2 (two) local sureties each of the like amount to the satisfaction of the arresting authority, subject to the conditions that the petitioners shall - **(i)** appear before the concerned Investigating Officer of said Barpeta P.S. Case No. 192/2023 **on or before 28.06.2023** and thereafter, as and when they are required for necessary investigation of the case; **(ii)** not leave the territorial jurisdiction of said Barpeta Police Station, without obtaining prior written permission from the concerned I/O of the case; **(iii)** not hamper with the investigation, or tamper with the evidence of the case and **(iv)** not, directly or indirectly, make any inducement, threat any family members of the victim or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer.

Any violation of any of the aforesaid terms and conditions by the petitioners, named above, pre-arrest bail granted to them in said Barpeta P.S. Case No. 192/2023 shall stand automatically vacated.

Accordingly, this pre-arrest bail application stands allowed to the extent above.

Return the case diary.

JUDGE

Comparing Assistant