

GAHC010102072023



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

Case No. : Crl.Pet./453/2023

AZINUR HUSSAIN
S/O MONOWAR HUSSAIN
R/O JHAGRARPAPAR
P.S. DHUBRI
DIST. DHUBRI, ASSAM
PIN CODE- 783325

VERSUS

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

2:NURJAHAN KHATUN
W/O DULALUDDIN AHMED
R/O WARD NO. 08
GTB ROAD
P.S. DHUBRI
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 22-11-2023

1. Heard Mr. T.J Mahanta, learned senior counsel assisted by Mr. S Rahman, learned counsel for the petitioner. Also heard Mr. D Das,

learned Addl. PP and Mr. A Talukdar, learned counsel for the respondent No.2.

2. The present application is filed under section 482 of the Cr.P.C, 1973 quashing the charge sheet filed by the Investigating Officer in Dhubri PS Case No.14/2023 corresponding to GR Case No.74/2023 under sections 376/354/325/506 IPC read with section 6 of the POCSO Act, 2012. The said PS Case was registered on the basis of an FIR lodged by the respondent no.2.

3. This Court while issuing notice of motion, called for the scanned copy of the case record along with the case diary including the statement of the victim recorded under section 164 Cr.P.C and the medical report.

4. After perusal of the materials and the statements as aforesaid including the allegations made in the FIR, this Court is of the considered opinion that if the same are to taken on its face value, a case under the aforesaid sections of law are prima facie made out.

5. That being the position, this Court is not inclined to exercise its power under section 482 Cr.P.C to quash the entire proceeding inasmuch as the petitioner shall have a fair chance to contest the allegations during the trial.

6. At this stage Mr. T.J Mahanta, learned senior counsel submits that if the allegation of commission of rape of the victim during the trial are taken to be true, then the petitioner/accused who was also a minor at that point of time is also entitled for the protection under the Juvenile Justice (Care and Protection of Children) Act, 2015.

7. From the statements it is seen that the alleged offence was committed for the first time in the year 2016 and at that point of time

the victim was allegedly a minor. It is the claim of the petitioner that the petitioner and the victim being classmate, they are of the same age and the petitioner was also a minor at that point of time.

8. Law is well settled that when a claim is made seeking protection of being a juvenile, such juvenility is to be decided as provided under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and such determination can be made by the learned Trial Court in the event, such question is raised before the learned trial Court.

9. That being the position while dismissing the present petition it is provided that in the event the petitioner/accused raises the plea of juvenility, the learned trial court shall first determine such plea of juvenility in terms of the Juvenile Justice (Care and Protection of Children) Act) 2015 and the rules framed there under for determination of the juvenility of an accused.

10. With the above observations, the present criminal petition stands dismissed.

JUDGE

Comparing Assistant