

GAHC010122672023



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

Case No. : AB/2008/2023

MOKIM ALI AND 6 ORS
S/O- LT. HANIF ALI,
RESIDENT OF PANDU COLONY,
P.O.- PANDU, P.S.- JALUKBARI,
DIST- KAMRUP(M), ASSAM.

2: MUNNI KHATUN
W/O- MOKIM ALI
RESIDENT OF PANDU COLONY
P.O.- PANDU
P.S.- JALUKBARI
DIST- KAMRUP(M)
ASSAM.

3: MD. SAMIM ALI
S/O- LT. HANIF ALI
RESIDENT OF PANDU COLONY
P.O.- PANDU
P.S.- JALUKBARI
DIST- KAMRUP(M)
ASSAM.

4: MD. TASLIM ALI
S/O- SAMIM ALI
RESIDENT OF PANDU COLONY
P.O.- PANDU
P.S.- JALUKBARI
DIST- KAMRUP(M)
ASSAM.

5: MD. ASLAM
S/O- SAMIM ALI
RESIDENT OF PANDU COLONY

P.O.- PANDU
P.S.- JALUKBARI
DIST- KAMRUP(M)
ASSAM.

6: SABINA KHATUN
W/O- SAMIM ALI
RESIDENT OF PANDU COLONY
P.O.- PANDU
P.S.- JALUKBARI
DIST- KAMRUP(M)
ASSAM.

7: MD. AZIM @ MD. AZIM ALI
S/O- LATE HANIF ALI
RESIDENT OF PANDU COLONY
P.O.- PANDU
P.S.- JALUKBARI
DIST- KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. A S CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

Date : 21.08.2023

Heard Mr. N. J. Dutta, learned counsel for the petitioners. Also Heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent as well as the informant/alleged victim in person.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of

pre-arrest bail to the petitioners, namely, **1. Mokim Ali, 2. Munni Khatun, 3. Md. Samim Ali, 4. Md. Taslim Ali, 5. Md. Aslam, 6. Sabina Khatun, 7. Md. Azim @ Md. Azim Ali**, apprehending arrest in connection with **All Women P.S. Case No. 31/2023** registered u/s **376(2)(f)/420/386/325/450/354(D)/506/ 509/120B** of the IPC r/w Section **67** of I.T. Act, 2000, r/w Section **18(d)** of Transgender Persons (Protection of Rights) Act, 2019.

The Case diary, as called for, is placed before the Court.

The informant/alleged victim has filed an additional affidavit-in-opposition.

It may be mentioned that by order, dated 30.06.2023, this Court granted the privilege of interim pre-arrest bail to the petitioners.

Mr. Dutta, learned counsel for the petitioners, submits that as per the conditions of the interim pre-arrest bail, the petitioners have appeared before the Investigating Officer and got their statements recorded under Section 161 Cr.P.C. Mr. Dutta further submits that the petitioners had nothing to do with the case, which is basically against the arrested accused, namely, Mansur Alam and as the petitioners have joined investigation, their custodial interrogation for the purpose of investigation is, perhaps, not needed.

Mr. B. Sarma, learned Addl. Public Prosecutor, submits that the case diary reveals that in terms of the interim pre-arrest bail order, the petitioners are co-operating in investigation and there is no adverse report, in this regard, from the side of the Investigating Officer.

Perusal of the additional affidavit filed by the informant/alleged victim, opposing the instant pre-arrest bail application, in paragraph No. 5, the victim has averred as hereinbelow extracted:-

“5) That, the informant cum victim humbly begs to state that, the co-accused(s) (herein as petitioner) in A.B. No. 2008/2023, were enlarged on the interim bail vide order dated 30/6/23 by this Hon’ble Court who were indulging in threatening me in every possible way, but surprisingly on 11.8.2023, two of the accused namely Md. Taslim and Aslam threw stone on the window of my chamber resulting into breaking the same and regarding the incident, the same has been intimated to the I.O. and O.C. of the All Women Police Station.

A copy of the photographs pertaining to the destruction of the chamber window is enclosed and the same is marked as Annexure -II)”

It may be stated that no case appears to have been registered by police on the above allegation based on the photograph of mischief caused to glasses fitted to the house and, as such, not taken into consideration being not relevant to the incident involved herein.

The genesis of the prosecution case, as unfolded in the FIR, is that an FIR was lodged on 23.05.2023 at 6:30 PM by the informant at All Women Police Station alleging, *inter-alia*, that the accused Mansur Alam joined informant's chamber as Typist in the month of June 2021. After passing few days, he started flirting with the informant and also started trying to brainwash her to accept Islamism. The accused Mansur used to offer her some water and after drinking the same, she used to fell unconscious on her lower parts of the body and barely can move her hands, and during that moment, Mansur Alam used to have physical relation with her several times. It is also alleged that the accused and his other family members deceitfully taken lots of valuable goods including money from the informant. It is further alleged that the accused Mansur Alam

frequently visited her house and induced to complete her pending Sex Reassignment Surgery and, accordingly, the informant underwent a surgery, but Mansur Alam denied to marry her and threatened her not to disclose anything to anyone.

The medical report of the Board of Doctors of Guwahati Medical College and Hospital, dated 29.05.2023, reveals, *inter-alia*, evidence of Sex Reassignment Surgery from male to female on her private parts by sex changing operation and evidence of injury on her body and private parts was not detected.

The victim, who is an Advocate by profession, in her statement under Sections 161 and 164 Cr.P.C. has implicated the arrested accused Mansur Alom as the prime perpetrator of the alleged offence and the present petitioners, who are his close relatives, are also roped into peripheral connected implications.

Pursuant to the condition of the interim pre-arrest bail order, referred to above, the petitioners have been co-operating with the Investigating Officer. There is no adverse report from the side of the Investigating Officer against them. Therefore, this Court is of the opinion that in the backdrop of facts and nature of evidence collected by the Investigating Officer, custodial interrogation of the petitioners for the purpose of ongoing investigation is not needed.

For the above stated reasons, the interim pre-arrest bail granted vide order, dated 30.06.2023 is hereby made **absolute**, subject to the following conditions-

- (i) That the petitioners shall co-operate in investigation as and when required;
- (ii) That the petitioners 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; and

- (iii) That the petitioners shall refrain from committing any nuisance to the informant victim in any manner

Any breach of the above conditions shall render cancellation of the pre-arrest bail in accordance with law.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant