

GAHC010122782023



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

Case No. : AB/2022/2023

JAKIR HUSSAIN
S/O ABDUR RAHMAN
R/OVILL- SALMARA PART-VI
P.S. FAKIRGANJ
DIST. DHUBRI, ASSAM
PIN-783330

VERSUS

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

2:NOJOR ALI
S/O LATE BOYAT ALI
R/O VILL- SALMARA PART-VI
P.S. FAKIRGANJ
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. A A MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

28.06.2023

Heard Mr. N.J. Dutta, learned counsel appearing for the petitioner. Also

heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent No.1 and Mr. S.K. Sarkar, learned counsel for the respondent No.2.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioner, namely **Jakir Hussain** apprehending arrest in connection with **Fakirganj P.S. Case No.140/2022** under Sections **363/365** of the IPC.

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

The respondent No.2 has filed objection.

The case relates to commission of kidnap of the minor daughter of the informant by the petitioner on 15.08.2022 while she was returning from school.

Mr. N.J. Dutta, learned counsel appearing for the petitioner, submits that the victim girl had fallen in love with one boy namely, Ranaul Masud alias Rasel of same school, who is the nephew of the present petitioner, which relationship is evident from various letters, joint photographs from the side of the victim girl. Later on, Mr. Dutta submits, that the father of the alleged victim girl approached the petitioner with a proposal to solemnize their marriage, which the petitioner turned down as under the provisions of the Indian Majority Act, the nephew being a minor, his marriage is not permissible and as such, the FIR was lodged making a false accusation. Mr. Dutta also submits that the victim girl is a student under the petitioner, who is a tutor of Bahir Salmara M.V. School and a married person and after the aforesaid incident, the informant started to blackmail him demanding an amount of Rs.5,00,000/-. Therefore, Mr. Dutta submits that the case being based on a false and concocted story, he may be given the opportunity to get his statement recorded and cooperate in investigation into

the case by way of granting the privilege of pre-arrest bail.

Mr. B.B. Gogoi, learned Addl. P.P., submits that as per the radiological test report, the age of the victim girl is 14/15 years and in her statements recorded under Sections 161 and 164 Cr.P.C., she has implicated the petitioner with the alleged offences and alleged of commission of rape on her. The medical report, however, shows that she is not consistent with recent sexual assault/intercourse.

On scrutiny of the case diary, it is revealed that the date of birth of the victim girl is 16.03.2007 vide the School Certificate and as per radiological report, her age is 14/15 years.

The witnesses account shows that the petitioner forcibly kidnapped the victim girl, who is a student of the petitioner.

On consideration of the clear prima facie incriminating material available in the statements of the victim minor girl, as stated above, this Court is of the opinion that the petitioner cannot be granted the privilege of pre-arrest bail

Accordingly, the pre-arrest bail application of the petitioner stands rejected.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant