

GAHC010145092023



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

Case No. : AB/2319/2023

MUNINDRA SAIKIA
S/O LATE DANDIRAM SAIKIA
VILL- KAMAR GAON
P.O. POTIYA GAON
P.S. MAJILI
DIST. MAJULI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 28.06.2023

Heard Mr. A. Ahmed, learned counsel appearing for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor appearing for the State of Assam.

2. This Anticipatory bail petition has been filed by the petitioner, namely, Munindra Saikia, apprehending arrest in connection with Majuli Police Station Case No. 67/2023, registered under Sections 376/511 of IPC read with Section 10 of the POCSO Act, 2012.

3. The learned counsel appearing for the petitioner submits that by an FIR dated 19.06.2023 lodged by the informant, one Hem Chandra Duwara it was alleged that his daughter, who is a student of class-X in Bhogpur High School was inappropriately touched by one teacher of the school named in the FIR. It is alleged that the said teacher hugged her from behind and inappropriately touched her body with a view to commit rape upon her. It is mentioned in the FIR that there was some delay in lodging the FIR due to the mental state of the informant's daughter. It is submitted that on 16.06.2023 there was a meeting between the guardian and the Managing Committee, including some respectable persons of the locality, where the teacher had admitted his guilt and begged forgiveness in presence of all concerned.

4. The learned counsel for the petitioner submits that the petitioner is the Head Master of the said school and he is no way involved in the allegations made in the Fir. In fact, there is no allegation against the petitioner in the FIR. However, he apprehends arrest in view of the fact that the during investigation the Investigating officer informed the petitioner that because they failed to report an offence under the

provisions of POCSO Act, any persons responsible including the Head Master can also be booked under Section 21 of the POCSO Act. Accordingly, the petitioner has approached this Court praying for anticipatory bail.

5. Mr. B. Sarma, learned Additional Public Prosecutor submits that the petitioner instead of informing the police station was a part of the process for settlement of the offences alleged under POSCO as is evident from the enclosures in the anticipatory bail petition. He therefore submits that the case dairy be called for at this stage.

6. The learned counsels for the parties have been heard. Upon perusal of the POCSO Act, it is seen that Section 21 of the POCSO Act prescribes punishment for failure to report or record a case and the punishment prescribed is imprisonment of either description which may be extend to 6 (six) months with a fine or with both. Under sub Section 2 it is provided that any person, in-charge of any institution who fails to report the commission of an offence shall be punished with imprisonment for a term which may extend to one year and with fine. It is also seen that under Section 31 of the POCSO Act it is clearly provided that the provisions of Cr.P.C is also applicable. If that be so under the provisions of Cr.P.C any offences prescribing punishment for imprisonment upto 3 years are considered bailable offences. The punishment prescribed under Section 21 of POCSO Act upto one year will also be considered to be bailable offences.

7. In that view of the matter, in the event if the petitioner is arrested, he may apply for bail before the competent Court.
8. Accordingly, this anticipatory bail application is closed with the above observation.

JUDGE

Comparing Assistant