

GAHC010158492023



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

Case No. : AB/2533/2023

FULU DDIN @ FULAR UDDIN AND ANR
S/O MIR UDDIN SHEIKH
R/O VILL- GOREMARI NO. 2,
P.S. CHIRANG
DIST. CHIRANG, ASSAM

2: MOFIDUL ISLAM
S/O FULU DDIN @ FULAR UDDIN
R/O VILL- GOREMARI NO. 2
P.S. CHIRANG
DIST. CHIRANG
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

22.08.2023

Heard Mr. B. Chowdhury, learned counsel for the applicant and Mr. B. Sarma, learned Addl. P.P. for the State respondent.

2. Apprehending arrest in connection with Panbari PS Case No. 44/2023, under Sections 417/376 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Fulu ddin @ Fular Uddin and Mofidul Islam for grant of pre-arrest bail.

3. The said case was registered on the basis of an FIR lodged by one Johur Uddin, on 01.07.2023, to the effect that on 29.06.2023, at about 8 pm, one Mofidul Islam committed rape upon his daughter in the sugarcane field.

4. Mr. Chowdhury, learned counsel for the applicant submits that the applicant No. 1 Fulu ddin @ Fular Uddin is the father of the applicant No. 2 Mofidul Islam, who is the main culprit herein this case and he happens to be a juvenile also, as per the School Transfer Certificate issued by the Headmaster of Silkowari L.P. School and the date of birth of the applicant No. 2 is 17.02.2006. Mr. Chowdhury further submits that the applicant No. 1 has been granted interim pre-arrest bail vide order dated 26.07.2023, and pursuant to the said order, the applicant No. 1 appeared before the IO and his statement has been recorded he has been co-operating with the Investigating Agency and therefore, Mr. Chowdhury contended to make the interim order dated 26.07.2023, in respect of the applicant No. 1 Fulu ddin @ Fular Uddin, absolute in the same terms and conditions. Mr. Chowdhury also submits that the applicant No. 2 is innocent and he is also ready to cooperate with the Investigating Agency, and therefore, Mr. Chowdhury contended to allow the prayer of applicant No. 2.

5. On the other hand Mr. Sarma, learned Addl. P.P. has produced the case diary before this court and by referring to the statement of the victim girl recorded under Section 164 of the Cr.P.C., Mr. Sarma submits that she has implicated the applicant No. 2 Mofidul Islam with the offence alleged in the FIR and therefore, Mr. Sarma contended to dismiss the prayer in respect of applicant

No. 2. However, Mr. Sarma submits that the applicant No. 1 had appeared before the IO and he has been co-operating with the Investigating Agency.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary with the assistance of learned Additional Public Prosecutor.

7. It appears from the record that the applicant No. 1 Fulu uddin @ Fular Uddin has been granted interim pre-arrest bail by this Court, vide order dated 26.07.2023, and accordingly he appeared before the IO and his statement has been recorded and he has been cooperating with the Investigating Agency.

8. In view of above, custodial interrogation in respect of the applicant No. 1 Fulu ddin @ Fular Uddin, seems to be not warranted herein this case and therefore, this Court is inclined to make the interim order dated 26.07.2023, absolute in the same terms and conditions.

9. However, the case diary reveals prima-facie materials against the applicant No. 2 Mofidul Islam.

10. In view of the stage of investigation and also in view of the materials collected so far in the case diary as well as the submission of learned counsel for both the parties, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant No. 2 Mofidul Islam. Accordingly, the prayer in respect of the applicant No. 2 Mofidul Islam stands rejected, at this stage.

11. The case diary be returned.

JUDGE

Comparing Assistant