

GAHC010168732023



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

Case No. : AB/2702/2023

MD. MOSTAFIZUR ROHMAN AND 2 ORS
S/O HAKIM ALI SHEIKH
R/O FULERCHAR PART-III
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR

2: ROFIQUL ISLAM
S/O LATE AZIZUR RAHMAN
R/O KHOPATIA
P.S. SUKCHAR
DIST. SOUTH SALMARA MANKACHAR.

3: FIRDOUS UL KABIR MOLLAH
S/O ABDUS SABUR MOLLAH
R/O ROGHUPARA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA- MANKACHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:XXXXX
D/O ESTIAK AHMED
R/O PAGLATOLA
P.O. FEKAMARI
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

3:XXXXX
D/O NOZRUL ISLAM

R/O HATSINGIMARI (BHIMAPARA)
P.O. HATSINGIMARI
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 16.08.2023

Heard Mr. H. R. A. Choudhury, learned senior counsel appearing for the petitioners, including the petitioner No. 1, who is the informant of the case. Also Heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioners, namely, **1. Md. Mostafizur Rohman, 2. Rofiqui Islam, 3. Firdous Ul Kabir Mollah**, apprehending arrest in connection with **South Salmara P.S. Case No. 217/2023** registered u/s **376/354** of the IPC, r/w Sections **4/7/8/9/21** of POCSO Act, r/w Section **67(B)** of I.T. Act.

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

Mr. H. R. A. Choudhury, learned senior counsel, appearing for the petitioners, submits that the only alleged offence on the part of the petitioners was that they failed in duty to report to the police about the commission of the cognisable offence as it has come in the statement of one of the victim, recorded under Section 164 Cr.P.C. Mr. Choudhury further submits that the petitioners reported the alleged incident

promptly as soon as they came to know about it and assuming, but not admitting that the petitioners failed to report to the police, this may attract the minor offence under Section 21 of the POCSO.

Mr. B. Sarma, learned Addl. Public Prosecutor, submits that the case diary reveals that despite having come to know about the commission of the alleged offence, the petitioners intentionally did not report to the police.

The FIR *inter-alia* reveals the allegation that the informant, who is the Managing Director of Gyan Vikash Academy, Hatisingimari and the petitioner No. 1 herein, had come across some objectionable photographs of one Abdul Latif Ahmed, who is the teacher of the said academy, along with two girls on social media. It is also alleged that some miscreants are involved in illegal activities to bring down the reputation of the institution.

A perusal of the case diary including the statements of the victims recorded under Section 164 Cr.P.C., it is revealed that the incidents took place in the years 2021 and 2022. The victims stated that their school authority was aware about the incidents that took place in the year 2021 and 2022. But, the school authority did not take any action against the accused Abdul Latif Ahmed, a teacher of the school.

It may be noted here that the petitioner No. 1 is the Principal and the petitioner No. 2 is the Vice Principal respectively of the said school. Section 21 of the POCSO Act provides punishment for failure to report or record a case, which is a bailable offence.

Upon hearing the learned counsel of both sides and in the backdrop of facts and attending circumstances of the case, as the petitioners are not the main accused persons in the case, this Court is of the view that their custodial interrogation in the interest of the ongoing investigation is not warranted.

Accordingly, it is provided that in the event of arrest, the petitioners, named above, shall be released on pre-arrest bail, in connection with the above noted case on furnishing bail bond of **Rs. 30,000/- each** with one surety of like amount to the

satisfaction of the arresting authority, subject, of course, to the following conditions:

- (i) That the petitioners shall appear before the Investigating Officer within 7 days, failing which on and from the 8th day, this pre-arrest bail order shall have no force; and
- (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.

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

Return the case diary.

This disposes off the anticipatory bail application.

JUDGE

Comparing Assistant