

GAHC010170002023



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

Case No. : AB/2713/2023

ISHTIAQUE HUSSAIN MAZUMDER @ TERA MIA
S/O LT. ISHAK ALI MAZUMDER,
VILL- RANGAUTI PART-I, P.O. RANGAUTI, P.S. AND DIST. HAILAKANDI,
ASSAM

VERSUS

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

2:RIAZ UDDIN BARBHUIYA
S/OLT. JOYNAL ABIDIN BARBHUIYA
VILL- RANGAUTI PART-I
P.O. RANGAUTI
P.S. AND DIST. HAILAKANDI
ASSA

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17-08-2023

Heard Mr.R.P.Sarmah, learned Senior counsel assisted by Mr. A.M. Barbhuiya, learned counsel for the petitioner and Ms. A. A. Begum, learned Additional Public Prosecutor, Assam for the State.

By this application filed under Section 438 Cr.P.C., the petitioner, namely, **Ishtiaque Hussain Mazumder @ Tera Mia**, apprehending his arrest, is seeking pre-arrest bail in Hailakandi Police Station Case No. 48/2023 registered under Sections 354(B)/506 IPC read with Section 8 of the POCSO Act, corresponding to G.R. Case No. 201/2023 and Special (POCSO) Case No. 111/2023.

With regard to the incident occurred on 13.02.2023, the father of the victim on 16.02.2023 lodged an FIR before the Officer-in-Charge of Hailakandi Police Station that was registered on 27.02.2023 and in the said FIR, the father of the victim alleged that his daughter, the victim on 13.02.2023 went to the house of the petitioner who was unwell and on his request while the victim was cooking for him, the accused petitioner grabbed her from her back side, touched on her private parts and tried to forcefully commit rape on her. In the said FIR, the informant also stated that the date of birth of the victim was 13.01.2007 and at the time of occurrence of the incident, she was 16 years old. Accordingly, said FIR was registered as Hailakandi P.S.Case No. 48/2023.

Earlier, the petitioner approached this Court for his pre-arrest bail in AB No. 1102/2023 and the Court initially by order dated 24.03.2023 granted interim pre-arrest bail to him, pursuant to which, the petitioner appeared before the concerned Investigating Officer of said Hailakandi P.S.Case No. 48/2023 on 03.04.2023. However, on perusal of the case diary, the Court by order dated 27.06.2023, rejected the interim bail of the petitioner granted to him earlier on 24.03.2023 in said Hailakandi P.S.Case No. 48/2023.

This is second pre-arrest bail application of the petitioner in said Hailakandi P.S.Case No. 48/2023.

Perused the case diary recorded up to 12.08.2023.

It is seen that the concerned Investigating Officer of the case is yet to seize the Birth Certificate of the victim.

However, from the case diary, it is seen that the statement of the victim was recorded on 03.03.2023 and while the victim deposed before the learned Judicial Magistrate 1st Class, Hailakandi, she stated her age to be 16 years. Further, the learned Judicial Magistrate 1st Class, Hailakandi on 03.03.2023 enquired from the victim about her age and the victim stated that she was about 16 years 1 month. As such, the learned Judicial Magistrate 1st Class, Hailakandi came to the finding that the victim is a minor.

The statement of the victim recorded under Section 164 CrPC on 03.03.2023 by the learned Judicial Magistrate 1st Class, Hailakandi available with the case diary discloses sufficient incriminating materials against the petitioner with regard to his involvement in the alleged crime.

From the case diary, it is seen that the concerned Investigating Officer of the case in his note categorically recorded that after obtaining the interim bail on 24.03.2023 in said Hailakandi P.S. Case No. 48/2023, the petitioner along with some other persons threatened the informant of dire consequences who lodged FIR against him relating to the present case and in that regard, on the information given by the informant, one Non-FIR case being Non-FIR Case No.53/2023 has been registered under Section 107 CrPC against the petitioner.

It is also seen from the case diary that the concerned Investigating Officer of the case wanted to approach the Court for rejecting the interim bail of the petitioner granted to him earlier on 24.03.2023 in said Hailakandi P.S. Case No. 48/2023, as he violated the conditions of said interim bail.

The petitioner has annexed a copy of the prescription dated 24.07.2023 regarding the medicines prescribed to him by the concerned Doctor that relates to Diabetic and Hypertension.

Considering the note of the concerned Investigating Officer of the case and finding sufficient incriminating materials against the petitioner with regard to his involvement in the alleged crime, the Court is of the view that it is not a fit case to grant pre-arrest bail to the petitioner, **Ishtiaque**

Hussain Mazumder @ Tera Mia in said Hailakandi P.S.Case No. 48/2023.

Accordingly, this application of the petitioner seeking pre-arrest bail in said Hailakandi P.S.Case No. 48/2023 corresponding to G.R. Case No. 201/2023 and Special (POCSO) Case No. 111/2023, stands rejected.

Return the case diary.

JUDGE

Comparing Assistant