

GAHC010185162023



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

Case No. : AB/2958/2023

NUR MOHAMMAD
S/O LATE SABED ALI
R/O VILL- BOHAPAHAR
P.O. BORPAK, P.S. MAYONG
DIST. MORIGAON, ASSAM
PIN-782411

VERSUS

THE STATE OF ASSAM
THROUGH THE PP, ASSAM

2:BAHARUL ISLAM
SON OF LATE MOHAMMAD ALI
RESIDENT OF VILLAGE BOHAPAHAR
P.O. BORPAK
P.S. MAYONG
PIN-782411
DISTRICT- MORIGAON
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 03.10.2023

Heard Mr. HRA Choudhdury, learned senior counsel, assisted by Mr. A. Alam, learned counsel for the petitioner and Mr. B. Sarma, learned Addl. Public Prosecutor for the State respondent No. 1. Also heard Mr. AHMR Choudhury, learned counsel for the respondent No. 2/ i.e. the informant.

This is an application under Section 438 Cr.P.C., filed by the petitioner namely Nur Mohammad, praying for pre- arrest bail who is apprehending arrest in connection with Mayong PS. Case No. 74/2023 under Sections 447/354 IPC read with Section 8 of the POCSO Act.

Case diary as called for is received and perused.

It is submitted by the learned senior counsel for the petitioner that the petitioner is about 80 years of age and there was no such incident which took place on the alleged date of incident as stated by the informant in the FIR. He further submits that on the date of incident, there was some quarrel which took place between the petitioner and his second wife, Ms. Ajufa Begum and when the quarrel erupted between them, the victim was also present in the house of the petitioner and when she attempted to separate her grandmother, she suffered pain on her person.

Considering the age of the petitioner, it is further submitted by the learned senior counsel for the petitioner that the petitioner is the grandfather of the victim and there was no question of attempting to commit rape on the victim. As such the benefit of pre-arrest bail may be extended to the petitioner.

On the other hand, learned Addl. PP has submitted that case diary is

received and on perusal of the case diary, it is seen that the statement of the victim was recorded under Section 164 Cr.P.C. wherein she implicated the petitioner that the petitioner had sexually abused her.

The learned counsel for the respondent No. 2 has submitted that the informant is the step son of the petitioner, who is around 80 years old. The petitioner had married to the mother of the informant due to death of his first wife and at the time of marriage, the petitioner had promised to give her 2/3 bighas of land but he has not fulfilled his promise and as such there was frequent quarrels between the petitioner and his mother, Ms. Ajufa Begum. On the date of incident, having seen them quarrelling, the victim while intervened, she sustained injury on her person.

It is further submitted by the learned counsel for the informant that on the advice of his mother i.e. the second wife of the petitioner, the informant lodged the FIR and subsequently, the respondent No. 2 came to know from his daughter i.e. the victim that there was no such incident of attempt to commit rape on his daughter, i.e. the victim by the petitioner.

I have considered the submissions of the learned counsel for the parties. I have perused the statement of the victim recorded under Section 164 Cr.P.C. wherein she stated that the petitioner had touched her breast and kissed on her cheek. But when the petitioner tried to remove her clothes, she raised alarm and her grandmother came to the spot. However, the father of the victim i.e. the informant has filed an affidavit stating that there was no such incident of attempt to commit rape on his daughter and he has no objection if bail is granted to the petitioner.

Situated thus, considering the age of the petitioner as well as the

background of the case, benefit of pre-arrest bail is extended to the petitioner.

Accordingly, it is directed that the petitioner above named be released on pre-arrest bail in connection with Mayong PS. Case No. 74/2023 under Sections 447/354 IPC read with Section 8 of the POCSO Act on furnishing a bond of Rs. 20,000/- with a suitable surety of like amount to the satisfaction of the arresting authority subject to the following conditions that:-

1. the petitioner shall appear before the I.O. within 7 days from today.
2. the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;
3. the petitioner 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/ her from disclosing such facts to the Court or any other police officer, and
4. the petitioner shall not hamper the investigation or temper with the evidence of the case.

It is made clear that violation of any of the aforesaid conditions, if brought to the notice of this Court, may invite an order for cancellation of bail granted to the –accused-petitioner.

The bail application is disposed of.

Return the case diary.

JUDGE

Comparing Assistant