

GAHC010186372023



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

Case No. : AB/2959/2023

MOFIZUR RAHMAN
S/O- ALHAJ ABU SAYED, R/O- NABINAGAR, WARD NO. 18, P.O.
BALADMARI, P.S. GOALPARA, DIST.- GOALPARA (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SAIBANU NESSA
W/O- RAFIK ALI
R/O- NABINAGAR
WARD NO. 18
P.O. BALADMARI
P.S. GOALPARA
DIST.- GOALPARA (ASSAM)

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 15.09.2023

Heard Mr. H. R. A. Choudhury, learned senior counsel for the petitioner.
Also Heard Mr. B. B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for
the State respondent and Mr. T. A. Laskar, learned counsel for the respondent

No. 2.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioner, namely, **Mofizur Rahman**, apprehending his arrest in connection with **Goalpara P.S. Case No. 124/2023** registered u/s **354-A** of the IPC, r/w Section **12** of POCSO Act.

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

Mr. H. R. A. Choudhury, learned senior counsel, appearing for the petitioner, submits that the petitioner, who has vision problem, has relinquished the post of Head Teacher of the school and continued as the Assistant Teacher and considering his health condition and the small school room with 32 students and two teachers, the story of the case is concocted and baseless. According to Mr. Choudhury, there was dispute regarding appointment of a cook in the school and this dispute led to filing of false case through a female student as conspiracy.

Per contra, Mr. B. B. Gogoi, learned Addl. Public Prosecutor, Assam, submits that from the case diary, more particularly, the statement of the victim girl, recorded under Sections 161 and 164 Cr.P.C., it appears that there is *prima facie* material against the petitioner.

Mr. T. A. Laskar, learned counsel appearing for the respondent No. 2/informant submits that the petitioner, who is an Assistant Teacher, committed sexual harassment on his female student/victim herein and he had committed similar offence earlier for which he was facing complaint case.

The FIR reveals the allegation of sexual harassment on the minor victim by the petitioner.

The medical report does indicate 'not detected'.

The radiological test report gives the impression that the victim's age is between 12 to 16 years.

The victim's statements recorded under Sections 161 and 164 Cr.P.C. reveal that the petitioner, who is her teacher, inappropriately touched her in class.

The investigation appears to have significantly progressed.

In the overall backdrop of facts and evidence, so far collected, this Court is of the opinion that custodial interrogation of the petitioner may not be needed for the purpose of the ongoing investigation.

Accordingly, it is provided that in the event of arrest, the petitioner, named above, shall be released on pre-arrest bail, in connection with the above noted case on furnishing bail bond of **Rs. 40,000/-** with one surety of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:

(i) That the petitioner 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 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 from disclosing such facts to the Police Officer or the Court; and

(iii) That the petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission.

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