

GAHC010195642023



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

Case No. : AB/3033/2023

AYNAL HOQUE
S/O LT SAYED ALI,
VILL.- BHATNAPAITY, P.S.- ALOPOTI, DIST.- BARPETA, ASSAM.

VERSUS

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

2:AMZAD ALI
S/O AYAN ALI

VILL.- BAHATI CHAR PART-II
P.S.- MATIA
P.S.- GOLAPARA R.P.S
DIST.- GOLAPARA
ASSAM
PIN- 783125

Advocate for the Petitioner : MR Z HUSSAIN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 13.10.2023

Heard Mr. M. Hoque, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State and Mr. S.H. Rahman, learned counsel for the informant.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Aynal Hoque**, in connection with **Goalpara River P.S. Case No. 29/2023**, registered under Section **363/34 IPC r/w Section 4 of POCSO Act.**

It is submitted by the learned counsel for the petitioner that there is no allegation against the petitioner that he had committed any offence under Section 4 of POCSO Act. The other co-accused person Monnaf Ali has already granted bail by the learned trial court. It is also submitted that the petitioner accompanied with one Ashabul Hoque when the victim was taken away so in fact, the petitioner did not commit any offence as alleged in the FIR. Considering the background of the case and the nature of offence, benefit of pre-arrest bail may be extended to the petitioner.

In response, the learned Additional Public Prosecutor and the learned counsel for the informant have fairly submitted that the petitioner was accompanied with the main accused when the victim was taken away from her house. They also submitted that the prayer of the petitioner may be considered after perusal of the case diary.

I have considered the submissions made by the learned counsel for the parties.

I have perused the case diary along with the statement of the victim wherein the victim has stated that on the day of the incident, Ashabul Hoque and the present petitioner forcefully took her away from her house. Subsequently, the petitioner left the place and Ashabul Hoque had committed rape on her.

Considering the materials available in the case diary as well as the documents available on record, this Court finds that custodial interrogation of the petitioner is not required, therefore, he is granted the privilege of pre-arrest bail.

Accordingly, it is provided that in the event of arrest of the petitioner, name dabove, in connection with **Goalpara River P.S. Case No. 29/2023**, registered under Section **363/34 IPC r/w Section 4 of POCSO Act**, he shall be released on furnishing bail bond of **Rs.20,000/-** with **a suitable surety** of the like amount, to the satisfaction of the arresting authority.

The direction for pre-arrest bail is subject to the conditions that the petitioner:

(a) shall appear before the Investigating Police Officer within ten days from today and shall co-operate with the investigation;

(b) 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.

(c) shall not commit such offence as alleged in the FIR in future.

The anticipatory bail application stands disposed of accordingly.

Return the case diary.

JUDGE

Comparing Assistant