

GAHC010197182023



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

Case No. : AB/3035/2023

SYED ZAMANUR RAHMAN @ JAMANUR RAHMAN
S/O SYED RAFIQR RAHMAN
PERMANENT RESIDENT OF VILL- BARPALAHA, BAIHATA CHARIALI,
UNDER BAIHATA CHARIALI POLICE STATION, IN THE DISTRICT OF
KAMRUP, ASSAM

VERSUS

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

2:SMTI. NAMITA BAISHYA
W/O SRI BAPAN BAISHYA
PERMANENT RESIDENT OF VILL- BAGURIHATI
UNDER BELSOR POLICE STATION
IN THE DISTRICT OF NALBARI
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

17.10.2023

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Ms. J. Saikia,
learned counsel for the applicant and also heard Mr. D. Das, learned Additional Public

Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Nalbari P.S. Case No.366/2023 under Section 304(A)/376/34 IPC read with Section 5(e) of the Protection of Children from Sexual Offences Act, 2012, this application under Section 438 Cr.P.C. is preferred by the applicant, namely, Syed Zamanur Rahman @ Jamanur Rahman, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Smt. Namita Baishya on 28.08.2023. The essence of allegation made in the aforesaid FIR is that the informant got her daughter Smt. X (name withheld) admitted in Nalbari Sarathi Hospital on 17.08.2023, for treatment of Auxiliary Lipoma on her right armpit and in due course she was operated by Dr. Zamanur Rahman along with Dr. Sandeep Das and after the operation they informed her that water was lodged in the lungs of her daughter and she has been kept in ventilation. Thereafter, on 18.08.2023 CT scan of brain and heart was performed by the doctor and thereafter, she has been informed that edema was found in her brain. Thereafter, she has taken her daughter to GNRC Hospital for better treatment, where she has been informed that her daughter's brain has already dead and on 23.08.2023, at about 0128 hours her daughter was declared dead and her daughter died because of the medical negligence of Dr. Zamanur Rahman and Dr. Sandeep Das and she doubt that Dr. Zamanur Rahman and Dr. Sandeep Das have committed rape upon her daughter.

4. Mr. Choudhury, learned Senior counsel for the applicant submits that the applicant has been granted the privilege of interim pre-arrest bail by this Court vide order dated 01.09.2023, and pursuant to the said order, the applicant had appeared before the I.O. and he has been cooperating with the investigating agency and that only a case under Section 304(A) IPC is made out against the applicant if at all and the same is bailable and rest of the offences are not made out and therefore, Mr. Choudhury contended to make the interim order dated 01.09.2023, absolute, in the same terms and conditions.

5. On the other hand, Mr. D. Das, learned Additional Public Prosecutor has produced

the case diary before this Court and confirmed that the applicant had appeared before the I.O. and cooperating with the investigating agency. Further, referring to the postmortem report of the victim girl, Mr. Das submits that the same failed to indicate any sign of commission of the offence under Section 376 IPC and that final opinion is reserved in view of non-receipt of the toxicological report.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Das, learned Additional P.P.

7. The postmortem report, which is available in the case diary, indicates that the opinion regarding the cause of death has been kept pending till receipt of toxicological analysis report from DFSL, Kahilipara and the report also indicates that there is no evidence of sexual assault present over her private parts and body during postmortem examination.

8. In view of the materials collected so far in the case diary, specially in view of the postmortem report available in the case diary and also considering the submission of the learned Advocates of both sides and further considering the fact that cooperation is being extended by the applicant with the investigating agency, his custodial interrogation seems to be not warranted here in this case. Accordingly, this Court is inclined to make the interim order dated 01.09.2023, absolute, in the same terms and conditions.

9. In terms of above, this anticipatory bail application stands disposed of.

10. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant