

GAHC010200992023



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

Case No. : AB/3122/2023

FAZIDUL ISLAM @ KAZIDUL ISLAM
S/O SHAHAZUDDIN SK.
VILL- BERABHANGA PT.II
P.S. SUKCHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM, PIN-783135

VERSUS

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

2:SHORISHAFULI BIBI
W/O KADER HUSSAIN
VILL- KANAIMARA PT.I
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSA

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

12.10.2023

Heard Mr. AZ Ahmed, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam.

This application is filed by the petitioner, namely, Fazidul Islam @ Kazidul Islam, apprehending arrest in connection with South Salmara Police Station Case No.196/2023 registered under Sections 448/376(3)/511 read with Section 8 of the POCSO Act.

Learned counsel for the petitioner submits that by an FIR dated 09.07.2023 was lodged in which it was alleged by the informant that her daughter, who was aged about 13 years, was called by the accused no.3 to the house of the accused nos. 2 & 3 and keeping her inside the house the accused the no.3 locked the door from the inside. Thereafter, the accused no.1 with the help of the petitioner/the accused no.2 and another person tried to physically assault the informant's minor daughter forcefully by gagging her mouth with a cloth and because of hue and cry made, the minor girl was recovered by the informant. Before filing of the FIR an attempt was made to settle the dispute by the village elders. Upon this FIR being registered, the aforesaid matter was

proceeded to investigation and the person namely, Nur Azim was arrested. Learned counsel for the petitioner submits that subsequently the main accused no.1 has already been released on bail by this Court by order dated 31.08.2023 passed in B.A. No.2701/2023. Learned counsel for the petitioner submits the allegations made against the petitioner are false and concocted and he was no way connected with the offences alleged. It is submitted by the learned counsel for the petitioner that some amount was taken on loan by the son of the informant and he was unable to repay the loan and when the petitioner insisted to repay the loan amount, the FIR was lodged making a false allegation against the petitioner.

This Court by order dated 14.09.2023 called for the case diary. Case diary, as called for, has been placed before the Court.

Heard the learned counsel for the parties as well as perused the pleadings and case diary carefully.

The victim in her statement recorded under Section 164 Cr.P.C. has implicated the petitioner and other persons. The incident was alleged to have been committed on 08.07.2023 at around 10.10 AM. The birth certificate available in the case diary reflects the date of birth of the girl child is 06.06.2010. The medical report which was submitted by the police sergeant

does not show any evidence of sexual assault. No external injuries are also noticed. Perusal of the case diary reflects that the matter is under investigation but charge-sheet has not been filed. Perusal of the case diary reflects that from the materials collected by the Investigating Officer of the case, there was a relationship between the petitioner and Nur Azim and they wanted to get married but they were not permitted as both of them were minor. Perusal of the case diary does not reveal any materials towards the involvement of the petitioner. It is also submitted by the learned counsel at the bar that Nur Azim was arrested and he subsequently enlarged on bail by this Court by order dated 31.08.2023 passed in B.A. No.2701/2023.

Considering the progress of the investigations being carried on and also taken into account the statements recorded during the course of the investigation and, this Court is inclined to allow the bail application.

Accordingly, it is provided that in the event of arrest of the petitioner, named above, in connection with the above noted case, he shall be released on interim pre-arrest bail upon furnishing a bail bond of Rs. 40,000/- (Rupees Forty Thousand) only with one local 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 10 days from today;

- (ii) That the petitioner shall not hamper or tamper with the investigation in any manner;
- (iii) 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 Court or to any police officer; and
- (iv) That the petitioner shall not change his residence without obtaining prior written permission from the concerned Investigating Officer of the case.

In the event, the petitioner is found to have violated any of the above conditions or is found to be involved in other offences, the Investigating Officer shall be at liberty to apply for recall/cancellation of the bail granted to the petitioner.

With the above direction, the bail application stands disposed of.

JUDGE

Comparing Assistant