

GAHC010201862023



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

Case No. : AB/3119/2023

SAIFUL ISLAM CHOUDHURY
S/O LT. AMIRUDDIN
R/O AZAD NAGAR,
WARD NO. 25, MOUZA - NIZ SAHAR
P.O. CHOTAHAIKOR, P.S. NAGAON,
DIST. NAGAON, ASSAM
PIN-782003

VERSUS

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

2:JUSHNARA BEGUM
W/O HIFZUR RAHMAN
R/O VILL- AZAD NAGAR

P.O NAGAON

P.S. NAGAON SADAR
DIST. NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : S AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

Date : 06.11.2023

Heard Mr. S Ahmed, learned counsel for the petitioner. Also heard Mr. R.R. Kaushik, learned Addl. Public Prosecutor for the State/respondent.

By this petition filed under Section 438 Cr.P.C., the petitioner, namely, **Saiful Islam Choudhury** has prayed for granting pre-arrest bail, apprehending arrest in connection with **Nagaon P.S. Case No.3346/2021** under Sections 376/506 of the IPC r/W Section 8 of POCSO Act.

The case diary is placed before the court.

An affidavit has been filed by the petitioner as regards service of notice on the respondent No.2 and paragraph No. 3 of the affidavit is extracted herein below:

“..... That the petitioner begs to submit that the copy of the notice was being received by the officer-in-charge of Nagaon Sadar P.S., District-Nagaon on 29.0.23, but according to the concerned officials, the same notice could not be served upon the informant as she is continuously changing her place of residence and is not traceable and more over the phone number of informant as being mentioned in the FIR of the informant is also switched off.”

The allegation in the FIR dated 29.12.2021 reveals sexual assault on the informant and her minor daughter by the present petitioner.

Record reveals that a cross-FIR has been lodged by the present petitioner against the informant on 08.07.2021.

On perusal of the case diary and the statements of the victim recorded under Sections 161 and 164 CrPC, it appears that there is difference in material particulars between the two statements.

Medical report shows that there was no mark of violence on the body and private parts of the victim girl.

The alleged occurrence had taken place on 21.12.2021 but the incident was reported to the police on 29.12.2021 i.e. after 8 days of the occurrence without explaining satisfactory reasons for such delay.

In the backdrop of facts as emerged from the case diary, this Court finds it not expedient

for custodial interrogation of the petitioner.

In view of above, the prayer for anticipatory bail is hereby granted.

It is provided that in the event of arrest of the petitioner, named above, he shall be released on **pre-arrest bail**, in connection with the above noted case on furnishing bail bond of **Rs.30,000/- (Thirty Thousand)** 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 the 8th day, the anticipatory bail order shall automatically expire; 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/her from disclosing such facts to the Court or to any police officer.

Breach of any of the above conditions shall render cancellation of the pre-arrest bail application in accordance with law.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant