

GAHC010202082022



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

Case No. : AB/2902/2022

MD ADBUL MANNAN
S/O HAZRAT ALI
R/O VILL- CHANIKHULA
P.S. KACHUA
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

11.05.2023

Heard Mr. N.J. Dutta, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam appearing for the State respondent.

By this second petition under Section 438 Cr.P.C., the petitioner, namely, **Abdul Mannan** has prayed for granting pre-arrest bail, apprehending arrest in connection with **Kachua P.S. Case No. 90/2022** under Section **376** of the IPC read with Section **6** of the POCSO Act.

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

It may be mentioned that the earlier pre-arrest bail application of the petitioner being A.B. No. 2236/2022 was rejected by this Court vide order, dated 06.09.2022.

Mr. N.J. Dutta, learned counsel for the petitioner, submits that the petitioner is a government servant and married having wife and children, one of whom is pursuing technical course in M.A.K. University of Technology, West Bengal. According to Mr. Dutta, the petitioner is roped into a false and fabricated case and the medical report does not support the allegation. Therefore, Mr. Dutta submits that the petitioner's interrogation is not required.

Mr. R.J. Baruah, learned Additional Public Prosecutor, submits that the victim girl being aged about 13 years 6 months on the date of occurrence, the pre-arrest bail application of the petitioner is not required.

The allegation made in the FIR is that the petitioner established physical relation with the minor daughter of the informant, who worked as a maid in his house by luring her with money and gifting her a mobile phone.

It appears from the School Certificate that the date of birth of the victim child is 21.12.2008 and as such, on the date of occurrence (21.07.2022), the victim girl was aged about 13 years 7 months 1 day.

The victim in her statements recorded under Sections 161 and 164 Cr.P.C. has stated to be aged about 14 years. The medical report reveals her age as

between 14 and 15 years as per Radiologist opinion.

The victim has implicated the petitioner with the alleged offences.

Section 376(3) of the IPC provides, *inter-alia*, that "Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

On the other hand, Section 438(4) Cr.P.C., *inter-alia*, provides that pre-arrest bail application for offence under Section 376(3) of the IPC is not sustainable or maintainable.

In view of the above reasons, this Court finds that the instant pre-arrest bail application is not maintainable under law and accordingly, stands rejected.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant