

GAHC010211342023



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

**Case No. : AB/3253/2023**

LATISH RABHA  
S/O- GHANA KANTA RABHA,  
VILL- JARIHAT ,  
P.O- PACHIA,  
P.S- BOKO, DIST- KAMRUP, ASSAM, PIN-781135

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

2:URBASHI RABHA  
W/O- PONAKON RABHA  
VILL- RAIPARA  
P.S- BOKO  
DIST- KAMRUP  
ASSAM  
PIN-78112

**Advocate for the Petitioner : MR. I H LASKAR**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**06.11.2023**

Heard Mr. P.K. Deka, learned counsel for the applicant and also heard Mr. K.K. Das,

learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Boko P.S. Case No.412/2023, under Section 376 IPC read with Section 4 of the POCSO Act, this application, under Section 438 Cr.P.C., is preferred by applicant, namely, Latish Rabha, for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Smt. Urbashi Rabha on 06.09.2023. The essence of allegation made in the said FIR is that her niece Smt. X (name withheld) is a student of Class XI in Rabha College and she has given birth of an illegitimate child on 28.08.2023 and when asked, she has disclosed the name of one Latish Rabha who allured and impregnated her.

4. Mr. Deka, learned counsel for the applicant submits that only after giving birth of a child the guardian of the victim lodged this FIR and prior to that there was no whisper against the applicant and the applicant is a local person and he is ready to face trial and ready to cooperate with the investigating agency and that only ossification as well as DNA test will reveal the actual age of the victim and the paternity of the child and therefore, it is contended to allow this petition.

5. On the other hand, Mr. K.K. Das, learned Additional P.P. has produced the case diary before this Court and referring to the birth certificate, which is available in the case diary Mr. Das submits that the date of birth of the victim girl is 04.05.2006, and as such she is a child as defined in Section 2(d) of the POCSO Act. Further Mr. Das referring to the statement of the victim girl recorded under Section 164 Cr.P.C. submits that she has implicated the applicant with the offence alleged in the FIR and therefore, Mr. Das has opposed the petition.

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. It appears from the FIR dated 06.09.2023, that the age of the victim girl is reflected as 17 years and the certificate of birth, which is available in the case diary also

indicates that her date of birth is 04.05.2006, and as such she is a child as defined in Section 2(d) of the POCSO Act. Further, it appears from the statement of the victim girl, recorded under Section 164 Cr.P.C. that she has implicated the applicant with the offence alleged in the FIR.

8. In view of above, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant and accordingly, the petition stands dismissed.

9. Case diary be returned.

**Sd/- Robin Phukan**  
**JUDGE**

**Comparing Assistant**