

GAHC010230052023



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

Case No. : AB/3471/2023

FARIDA KHATUN AND ANR
D/O FOYZAL HOQUE
R/O VILL- UTTAR BANGTIMARI, P.O. DHANUA, P.S. MAKACHAR, DIST.
SOUTH SALMARA MANKACHAR,
ASSAM, PIN-783135

2: FULBABULSK.
S/O MOKBUL HUSSAIN
R/O VILL- UTTAR BANGTIMARI
P.O. DHANUA
P.S. MAKACHAR
DIST. SOUTH SALMARA MANKACHAR

ASSAM
PIN-78313

VERSUS

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

2:GAZIBOR RAHMAN
SO LATE NAZMUL HOQUE
R/O VILL- MANULLYAPARA
P.O. FEKAMARI
P.S.SOUTH SALMARA
DIST. SOUTH SALMARA
MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

O R D E R

20.11.2023

1. Heard Mr. M. Islam, learned counsel for the petitioners as well as Mr. B.B. Gogoi, learned Addl. P.P. appearing for the State respondent and Mr. M.R. Khandakar, learned counsel appearing for the respondent no. 2.
2. The petitioners, namely, Miss Farida Khatun and Fulbabu Sk have filed this application under Section 438 Cr.P.C with prayer for pre-arrest bail as they are apprehending arrest in connection with Mankachar P.S. Case No. 308/2023, (corresponding to G.R. Case No. 720/2023), registered under Sections 376 AB/511 IPC, read with Section 8/10 of the Protection of Children from Sexual Offences Act, and also read with Section 67 of the Information Technology Act.
3. The allegation against the petitioners is that the petitioners took the minor victim about 12 years of age to the house of Abdul Wahab and she was handed over to Zahirul Islam. The accused Zahirul Islam outraged the modesty of the minor victim without her consent and also attempted to commit sexual assault

on her. Photographs were clicked during the assault.

4. The learned counsel for the respondents have raised serious objection against the bail petition of the petitioners stating that the petitioners are booked under a serious offence and petition under Section 438 Cr.P.C is not maintainable for offences registered under Sections 376AB/511 IPC.

5. It is submitted that the allegation against the petitioner no. 1 does not make out a case under Section 376AB of the IPC. It is submitted on behalf of the petitioner that the main accused Zahirul Islam is a Juvenile, who is aged about 17 years. It is submitted on behalf of the petitioner that she was not aware that such an incident may have occurred. She was not in favour of the activities indulged by the accused no. 1 and the victim and so, she informed the victim's father but her information against the activities of the victim and the accused no. 1 (Zahirul) acted as a boomerang.

6. I have perused the statement of the victim under Section 164 Cr.P.C and I have also perused the case diary.

7. I have considered the submissions at the Bar with circumspection.

8. I have also considered the submission that the petitioner, Farida Khatun is a young girl, who is only 19 years old. I have considered the submissions that the petitioner has pledged to co-operate with the investigation. The petitioner

Farida Khatun is a local resident and is not a flight risk.

9. Considering all aspects, the petition with prayer for pre-arrest bail by the accused Fulbabu Sk stands rejected at this juncture. However, in the event of her arrest of the petitioner Farida Khatun, she shall be enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the arresting authority,

Under the conditions that,

- (i) She will appear before the I/O within 10 days and co-operate with the investigation, and
- (ii) She will not leave the jurisdiction of the Court without prior permission till the completion of the investigation,

In the event of violation of any of the bail conditions, the bail order shall stands cancelled.

Send back the case diary.

JUDGE

Comparing Assistant