

GAHC010231832023



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

Case No. : Bail Appln./3669/2023

SHORIFUL ISLAM @ SARIFUL ISLAM AND ANR.
S/O AJIJUL HOQUE
R/O VILL- SIMULBARI
P.S. KACHUMARA
DIST. BARPETA, ASSAM

2: AJIJUL HOQUE @ AZIZUL HOQUE
S/O LT. AMIR ALI
R/O VILL- SIMULBARI
P.S. KACHUMARA
DIST. BARPETA
ASSA

VERSUS

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

2: AJAJUL HOQUE
THE CHILD MARRIAGE PROHIBITION OFFICER CUM SECRETARY OF 27
NO. MAHACHARA GAON PANCHAYAT
P.S. KACHUMARA

DIST. BARPETA
ASSAM
PIN-78112

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 19.10. 2023

Heard Mr. HRA Chodhury, learned senior counsel, assisted by Mr. SK Abdullah, learned counsel for the petitioners and Mr. RR Kaushik, learned Addl. Public Prosecutor for the State respondent No. 1.

This is an application under Section 439 Cr.P.C., filed by the petitioners, namely 1. Shoriful Islam @ Sariful Islam and (2) Ajijul Hoque @ Azizul Hoque seeking bail who were arrested on 03.10.2023 in connection with Kachumara P.S. Case No. 40/2023 under Sections 9/10 of the Prohibition of Child Marriage Act read with Sections 6/17 of the POCSO Act.

The learned counsel for the petitioner has submitted that both the petitioner No. 1 and victim girl had love affairs and she had eloped with the petitioner No. 1 and their marriage was solemnized and out of their wedlock, a child was also born. The petitioner No. 2 is the father of the petitioner No. 1 i.e. the father-in-law of the victim.

Learned counsel for the petitioners further submits that the allegation does not attract the provisions of the POCSO Act as the victim had voluntarily eloped with the petitioner No. 1 and got married at her own will. Under such backdrop, the prayer for bail of the petitioners may be considered.

On the other hand, the learned Addl. PP has made objection for granting bail to the petitioner by stating that the victim was minor when the alleged marriage took place.

Case diary is received and perused the same including the statement of the victim recorded under Section 164 Cr.P.C. which reveals that the victim had love affairs with the petitioner and she stated that she would commit suicide if her marriage was not solemnized with the petitioner No. 1. Thereafter, their marriage was solemnized and out of their wedlock, a child was born and she is leading conjugal life with the petitioner peacefully.

Considering the fact and circumstances of the case, prayer for bail of the petitioners is allowed.

Accordingly, it is directed that the accused/ petitioners above named be released on bail in connection with Kachumara P.S. Case No. 40/2023 under Sections 9/10 of the Prohibition of Child Marriage Act read with Sections 6/17 of the POCSO Act on furnishing a bond of Rs. 10,000/- (Rupees ten thousand) each with 1 (one) suitable surety each of like amount to the satisfaction of the learned Special Judge (POCSO), Barpeta, Assam.

The direction for bail is further subject to the conditions that the accused-petitioners:

- (a) shall not leave the territorial jurisdiction of the learned Special Judge (POCSO), Barpeta, Assam, without prior written permission from him/ her;
- (b) shall not hamper with the investigation of the case and tamper with the evidence; and
- (c) 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.

In terms of the above, this bail application stands disposed of.

Return the case diary.

JUDGE

Comparing Assistant