

GAHC010235032023



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

Case No. : Bail Appln./3786/2023

ROHIM BADSHA SHEIKH
S/O LATE SOPIAL SK.
VILL- BORAIKANDI, P.O. KANAIMARA
P.S. SOUTH SALMARA, DIST. SOUTH SALMARA MANKACHAR, ASSAM
PIN-783135

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:MRS. LOVELY KHATUN
W/O ROHIM BADSHA SHEIKH
R/O IVLL- BARAIKANDI
P.O. KANAIMARA

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 MALASRI NANDI**

ORDER

Date : 19.10. 2023

Heard Mr. M. Islam, learned counsel for the petitioner and Mr. KK Das, learned Addl. Public Prosecutor for the State respondent No. 1. Also heard Mr. M. Ahmed, learned counsel for the informant.

This is an application under Section 439 Cr.P.C., filed by the petitioner, namely Rohim Badsha Sheikh, seeking bail who was arrested on 03.10.2023 in connection with South Salmara P.S. Case No. 299/2023 (Corresponding to G.R. Case No. 928/2023) under Sections 9/10/11 of the Prohibition of Child Marriage Act read with Sections 6/17 of the POCSO Act.

It is submitted by the learned counsel for the petitioner that the petitioner got married to the victim, who was 15 years of age when the marriage took place in the year 2019. After their marriage, both the petitioner and the victim lived together peacefully. After four years of their marriage, the FIR has been lodged as a result of which the petitioner was arrested on 03.10.2023 and since then he is in jail hayat. The learned counsel for the petitioner also submits that the petitioner is no way connected with the offence under the POCSO Act as the victim or her family members had not lodged any complaint against the petitioner alleged to be committed the offence of sexual assault. Therefore, the bail prayer of the petitioner may be considered.

The learned counsel for the respondent No. 2 has submitted that the both the petitioner and the victim girl had love affairs and they got married as per the social rites and if the petitioner is kept behind the bar, the family life of the victim and the petitioner will be hampered.

The learned Addl. PP has made objection on the prayer of the bail as the victim was minor when the alleged marriage was solemnized.

I have considered the submissions of the parties.

As there is no allegation made by the victim or her family members for sexual assault/ abuse against the petitioner, the offence under the POCSO Act cannot be clubbed with the Child Marriage Act.

In view of the above, prayer for bail of the petitioner is allowed.

Accordingly, it is directed that the accused/ petitioner above named be released on bail in connection with with South Salmara P.S. Case No. 299/2023 (Corresponding to G.R. Case No. 928/2023) under Sections 9/10/11 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) with 1 (one) suitable surety of like amount to the satisfaction of the learned Special Judge, South Salmara, Mankachar, Assam.

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

- (a) shall not leave the territorial jurisdiction of the learned Special Judge, South Salmara, Mankachar, 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.

JUDGE

Comparing Assistant