

GAHC010242712022



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

Case No. : AB/3576/2022

MAHIDUL ALI KHA AND ANR
S/O- JAHAR ALI KHA,
R/O- VILLAGE GOROIMARI ,
P.S- AND DIST- BONGAIGAON, ASSAM, PIN-783380

2: HAZRAT ALI KHA
S/O- JAHAR ALI KHA

R/O- VILLAGE GOROIMARI

P.S- AND DIST- BONGAIGAON
ASSAM
PIN-78338

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 17-01-2023

Heard Mr. S.A. Ahmed, learned counsel for the applicant

appearing on behalf of Mr. S Islam, learned counsel and also heard Mr. RJ Baruah, learned Additional PP, appearing for the State of Assam.

Apprehending arrest in connection with ***Sorbhog PS Case No.135/2022***, under sections ***366(A)/343/384/506/34 IPC***, read with section 4 of the POCSO Act, this application under section 438 Cr.P.C., is preferred by applicants, ***1. Mahidul Ali Kha & 2. Hajrat Ali Kha***, for grant of pre-arrest bail.

The aforementioned case has been registered on the basis of one FIR lodged by the informant Abiruddin Mondal. The allegation leveled in the FIR against the applicant is that on 12.03.2022, at about 12.30 pm, his daughter Smti X (name withheld) aged 16 years, was proceeding towards a shop in order to purchase biscuit, then the accused No.2 took her to Nayan Bazar pretending to have a discussion with her, where one Mahidul Ali Kha was waiting in a pre planned manner, in a Maruti Car and then Mahidul Ali Kha and Afsar Ali kidnapped his daughter in the said vehicle and confined her in the house of Mahidul Ali Kha where Mahidul Ali Kha had physical relation with her, against her will. After three days Mahidul Ali Kha and Afsar Ali took signature of his daughter on a blank stamp paper with a promise to marry her.

The learned counsel for the applicant submits that there was some relation between the applicant No.1 Mahidul Ali Kha with the victim girl and he is innocent and ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

The learned counsel for the applicant further submits that

there is no involvement of the applicant No.2 Hajrat Ali Kha with the offence alleged in the FIR and therefore, this Court was pleased to grant interim protection to him vide order dated 02.12.2022 and pursuant to the said order, the applicant No.2 appeared before the IO and is cooperating with the investigating agency, and therefore, it is contended to make the interim order dated 02.12.2022, absolute under the same terms and conditions

On the other hand, Mr. RJ Baruah, learned Addl. PP has fairly submitted that the materials collected so far in the case diary are inadequate to show the complicity of the applicant No.2, with the offence alleged in the FIR.

However, Mr. Baruah, submits that the IO has collected sufficient materials against the applicant No.1 and as per statement of the victim girl, who was 16 years old at the relevant time has implicated him with the offence alleged in the FIR and therefore, Mr. Baruah contended to dismiss the petition.

Having heard the submission of learned Advocates for both the 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. Baruah, learned Addl. PP.

In view of the materials collected so far in the case diary, specially the statement of the victim girl recorded under section 164 Cr.P.C., 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 No.1, namely, Mahidul Ali Kha. Accordingly, the prayer in respect of Mahidul Ali Kha stands rejected.

However, in view of the submission of the learned Advocates for both the sides, and also in view of the materials collected so far in the case diary, against the applicant No.2, his custodial interrogation seems to be unwarranted here in this case and accordingly, this Court is inclined to make the interim order dated 02.12.2022, absolute in the same terms and conditions.

In terms of above, this AB stands disposed of.

JUDGE

Comparing Assistant