

GAHC010246662022



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

Case No. : Bail Appln./3309/2022

ABDUL MOTLEAB @ MUTALEB ALI @ BABU
S/O ISMAIL SK.
R/O VILL- NO. 3 JARAGURI, P.S.MANIKPUR, DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:MALEKHA KHATUN
W/O- LATE ASRAF
R/O- VILL- JAISINHPUR(138)PS- NUH MEWAT
DIST- NUH MEWAT
(HARYANA)
PIN- 12210

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

04.01.2023.

Heard Mr. M. Khan, learned counsel for the accused. Also heard Mr. B.B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, Abdul Motleab @ Mutaleb Ali @ Babu, who is languishing in jail hazot since 04.11.2022, in connection with Manikpur P.S. Case No.186/2022, under Sections 376(2)(i)/109/325/506 of the IPC, read with Sections 6/17 of the POCSO Act, for grant of bail.

The said case has been registered on the basis of an F.I.R., lodged by Malekha Khatun on 03.11.2022, to the effect that accused Abdul Motleab @ Babu, who happened to be her nephew, committed rape upon her minor daughter Smti 'X' (name withheld), aged 13 years 4 months, repeatedly and thereby impregnated her and now she has been carrying pregnancy of three months.

Mr. M. Khan, learned counsel for the accused submits that the accused was arrested on 04.11.2022, and since then, he has been languishing in jail hazot for last 62 days and that the accused is innocent and he has not committed any such offence and the allegations are false and therefore, it is contended to allow the petition.

Whereas, Mr. B.B. Gogoi, learned Addl. P.P., Assam has produced the case diary before this Court and submits that in her statement under Section 164 CrPC, the victim has implicated the accused with the offence alleged in the FIR and the provisional medical report also reveals that she has been carrying pregnancy of three months and therefore, Mr. Gogoi contended to dismiss the petition.

Having heard the submissions 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. Gogoi, learned Addl. P.P., Assam.

It appears that the I.O. has collected sufficient incriminating materials against

the accused and the offences are serious in nature and investigation is still going on and the final medical report is yet to be collected and the accused is the neighbour and relative of the complainant and possibility of misusing the liberty cannot be ruled out, at this stage.

Accordingly this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused and therefore, the same stands dismissed.

The case diary be returned.

JUDGE

Comparing Assistant