

GAHC010246672023



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

Case No. : Bail Appln./4009/2023

MOMINUL ISLAM
S/O MOINUL HOQUE
VILL- BOGAIJANPARA
P.S. HOWLY
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:HARAKANTA DAS
MOIRAMARA G P SECRETARY
HOWLY BARPETA
ASSA

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02.11.2023

Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr.

B.B. Gogoi, learned APP appearing for the State.

2. The petitioner, who was arrested on 03.10.2023, is seeking regular bail under section 439 Cr.P.C. in connection with Howly P.S. Case No. 163/2023, under Section 120(B) IPC, read with Section 9/10 of the Prohibition of Child Marriage Act, 2006, read with Section 6 of the POCSO Act.

3. The learned APP has opposed the prayer for bail on the ground that the petitioner is accused of committing offence under Section 6 of the POCSO Act and therefore, before grant of bail, notice is mandatorily required to be sent to the informant/victim. He also submits that the prayer for bail should not be granted without giving appropriate opportunity to him to oppose the bail application by calling for the case diary.

4. It is seen from Annexure-3 of this application, which is a birth certificate issued by the Medical Officer I/C, Sidli PHC, Department of Health Services that the alleged victim girl was born on 02.01.2005. As per the Marriage Certificate issued by the Muslim Marriage & Divorces Registrar, Office of the Muslim marriage & Divorces Registrar, Bilasipara dated 05.10.2023, the marriage of the alleged victim girl and the petitioner was solemnized on 12.01.2023. Therefore, on the date of marriage, the alleged victim girl was a major, having crossed the age of 18 years.

5. Under such circumstances, the Court does not find any requirement to issue notice on the informant or to await production of the case diary.

6. Considering that the victim girl was major when the marriage was solemnized between the petitioner and the alleged victim girl and considering that the petitioner has been arrested on 03.10.2023, the Court is of the

considered opinion that further custodial interrogation of the petitioner may not be necessary. Hence, the Court is inclined to grant bail to the petitioner, namely, Mominul Islam in connection with the aforesaid case on furnishing bail bond of Rs.40,000/- with one suitable surety of like amount to the satisfaction of the learned Special Judge, POCSO, Barpeta.

7. Bail is granted on the following conditions:

- I. The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.
- II. The petitioner 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 from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
- III. The petitioner shall not obstruct the smooth progress of the investigation/trial.
- IV. The petitioner shall not misuse his liberty in any manner.
- V. The petitioner shall appear before the I/O within 15 (fifteen) days from the date of his release and he shall continue to appear once in every month till his appearance is dispensed with or charge-sheet is filed, whichever is earlier.

8. The release of the petitioner on bail shall not preclude the I/O of the case to examine the correctness and veracity of the birth certificate and marriage certificate, which are annexed to this application as Annexure-3 and

Annexure-4 respectively.

9. This application stands disposed of.

JUDGE

Comparing Assistant