

GAHC010248402022



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

Case No. : AB/3603/2022

HAFIJUL ISLAM
S/O NURUL ISLAM, R/O BORAGAON, P.O. AND P.S.-GARCHUK, DIST-
KAMRUP (M), PIN-781035, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N DUBEY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

20.02.2023

Heard Mr. N. Dubey, learned counsel for the applicant and Mr. P.S. Lahkar, learned Addl. P.P. for the State respondent.

2. Apprehending arrest in connection with Hatigaon PS Case No. 404/2022, under section 376 of IPC read with section 4 of POCSO Act, this

application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Hafijul Islam for grant of pre-arrest bail.

3. The said case has been registered on the basis of an FIR lodged by one Hasina Begum, to the effect that on 11.04.2022, one Hafijul Islam took her minor daughter Smti X, "name withheld", to his home, with a promise to provide her education and to marry her and when her daughter reached the place of the accused, she found that the accused is already married and then the accused confined her in a room and tortured her physically and forcefully established physical relationship with her.

4. Mr. Dubey, learned counsel for the applicant submits that this is the second bail application preferred by the applicant and the first one was rejected vide order dated 16.11.2022, in AB No. 2678/2022. Mr. Dubey further submits that the ground for filing this second application is that the allegations made in the FIR are false and that the applicant has taken the victim to his house to impart her education and also to get her married, when she attain the marriageable age and that the applicant was married earlier with another lady and at the relevant point of time the divorce case was pending for disposal between him and his erstwhile wife in the court and now the same has been disposed of and the applicant is ready to accept the victim and to get her married and he is also ready to cooperate with the investigating agency, and therefore, it is contended to allow this petition.

5. On the other hand Mr. Lahkar, learned Addl. P.P. by producing the case diary before this court vehemently opposed the petition on the ground that the IO has collected sufficient incriminating materials against the applicant and the

last note of the IO in the case diary reveals that the accused has been threatening the victim as well as her mother for withdrawing the FIR for last few days and that the IO was directed to appear before this court personally, vide order dated 16.02.2023, and pursuant to this order the IO is present before this court and according to the IO during the course of the investigation the victim and the informant came to the police station and reported that the accused has been threatening them to withdraw the case, and therefore, Mr. Lahkar contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Lahkar, learned Addl. P.P.

7. Perusal of the case diary reveals that the IO has collected sufficient incriminating materials against the applicant in support of the allegation made in the FIR and the same are serious in nature. It also appears that the IO has collected the Admit Card of the victim issued by the Board of Secondary Education, Assam, where her date of birth is reflected as 25.03.2005 and that being so she has not completed the age of 18 years at the time of occurrence. Though Mr. Dubey tried to convince this court that the allegations are false, yet going through the statement of the victim under section 164 of the Cr.P.C. this court is unable to record such submission.

8. In view of above, this court is of the view that the ground so assigned for entertaining this second application is not at all tenable and that this is not a fit case where the privilege of bail can be extended to the applicant.

9. Accordingly the petition stands dismissed.
10. The case diary be returned.

JUDGE

Comparing Assistant