

GAHC010251362023



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

Case No. : AB/3766/2023

MAHIDUL ISLAM AND ANR
S/O- LALMAMUD ALI AHMED, VILL- SILAPATNI, P.O. CHENGLIMARI, P.S.
PATACHARKUCHI, DIST.- BAJALI, ASSAM, PIN- 781320

2: ABDULLAH AL-MARUF
S/O- JOYAN UDDIN
VILL- 2 NO. KAWADI
P.O. SONAIKOLA
P.S. MANIIKPUR
DIST.- BONGAIGAON
ASSAM
PIN- 78339

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

06.12.2023

Heard M. U. Mahmud, learned counsel for the petitioners. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State respondent.

This is an application filed under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with Patacharkuchi P.S. Case No. 342/2023, under Sections 365/376(D)/354(C)/506/379/370(A) of the Indian Penal Code.

Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioners, Mr. M. U. Mahmud, that the informant/victim earlier got married with another person named Nasir Uddin and after divorce, she again entered into an marriage agreement with the petitioner No.1. They started living together as a husband and wife, thereafter, the informant/victim willfully went to Kerela with her husband/petitioner No.1, but, subsequently with some concocted allegations she lodged an FIR against the 5(five) accused persons out of which 3(three) persons were already granted with the privilege of Anticipatory Bail by this Court.

He also submitted that both the informant/victim and the petitioner No.1 were in intimate relationship and she willfully got married with the

accused/petitioner No.1 after giving divorce to her earlier husband. He further submitted that there may be some allegation showing the involvement of the present accused/petitioner No.1 in the alleged offence, but, there is no such allegation against the petitioner No.2 and thus, his custodial interrogation is not required. The petitioner No.2 is a LL.B student and his examination will be commencing in the month of December/January. Accordingly, he prays for granting the privilege of pre-arrest bail to the accused/petitioners and it is submitted that they are ready to co-operate the I.O. in further investigation of this case.

In this context, the learned Additional Public Prosecutor, Mr. R. R. Kaushik, has submitted that there are sufficient incriminating materials available in the case diary showing their direct involvement in the alleged offence. He further submits that the present petitioners not only committed rape on the victim/informant, but, there are allegation of human trafficking against them, which is revealed by the witnesses as well as statement of the victim recorded under Sections 161 and 164 of Cr.P.C. as well. Accordingly, the learned Additional Public Prosecutor has raised objection in the prayer made by the learned counsel for the petitioners.

After hearing the submissions of the learned counsels for both sides, I have perused the case diary as well as the statement recorded by the victim under Sections 161 and 164 of Cr.P.C, wherein she not only brought the allegation of rape but also uttered the names of the accused/petitioners who forced her to have sexual intercourse with other person when she was in Chennai.

Considering the gravity of the offence and probability of influencing the informant/victim, as well as the bail objection filed by the I.O., I find that custodial interrogation of the present accused/petitioners may be necessary in this case to unearth some more facts of the case and also for the interest of just and proper investigation and accordingly, I am of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the accused/petitioners at this stage and accordingly, the same stands rejected.

In terms of above, this bail application stands disposed of.

Case Diary be returned.

JUDGE

Comparing Assistant