

GAHC010255632023



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

Case No. : AB/3862/2023

GALIB HUSSAIN
S/O AKKER ALI
VILL- DOMORTOLA
P.O. AND P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM PIN-783131

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:ANJIMA KHATUN
W/O MONOWAR HUSSAIN
VILL- DOMORTOLA
P.S. MANKACHAR
DIST. SOUTH SALMARA- MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 22.12.2023

Heard Mr. A. Z. Ahmed, learned counsel for the petitioner. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent and Mr. M. Hussain, learned counsel appearing on behalf of respondent No. 2.

This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Mankachar P.S. Case No. 403/2023, under Sections 376(2)(n)/376(3)/344/366(A) of the Indian Penal Code *read with* Sections 6/17 of the POCSO Act & *read with* Sections 9/10/11 of the PCM Act.

It is submitted by the learned counsel for the petitioner, Mr. Ahmed, that both the accused/petitioner and the victim girl had a love affairs and out of their love affairs, she eloped with the accused/petitioner by her own and might have also sexual relationship at her own will. But the entire dispute arises only when the father of the accused refused to get marry the victim with her son as because of her minor age and the case has been lodged with false and concocted allegation against the present accused/petitioner. Further he submitted that the F.I.R. has been lodged after 2 (two) months of the

occurrence and thus, the reasonable doubt arises in regards to the veracity of the prosecution case. However, the accused/petitioner is still ready and willing to co-operate with the I.O. in the further investigation of the case if he is granted with privilege of pre-arrest bail.

In this context, the learned Additional Public Prosecutor, Mr. Lahkar, has submitted that there are sufficient incriminating materials collected by the I.O. and the victim incriminated the present accused/petitioner in her statement recorded under Sections 161 & 164 Cr.P.C., wherein, it is specifically stated that she was kidnapped and subjected to forceful sexual assault. He further submitted that whatever may be the reason of delay in lodging the F.I.R. etc., but the fact remains same that the victim is a minor and she was subjected to sexual assault by the accused/petitioner. Accordingly, the learned Additional Public Prosecutor vehemently opposed the pre-arrest bail prayer of present accused/petitioner.

Mr. M. Hussain, learned counsel representing the respondent No. 2, also submitted that the victim was forcefully kidnapped and she was subjected to forceful sexual assault by the accused/petitioner and considering this fact of the case, the accused should not be released on bail or he should not be granted with the privilege of pre-arrest bail.

After hearing the submissions made by the learned counsels appearing on behalf of the parties, it is seen that the victim brought sufficient incriminating materials in her statement recorded under Sections 161 & 164 Cr.P.C. and from

the medical report collected by the I.O. also, it is seen that the victim was subjected to sexual assault. So, considering all these aspects of the case, specially the minor age of the victim, I find that the probability of hampering or tampering the witnesses, specially the minor victim, cannot be denied at this stage and accordingly, I am of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the accused/petitioner at this stage and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant