

GAHC010265772022



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

Case No. : AB/3815/2022

JANAB ALI @ JANAF ALI
S/O BAKKAR ALI,
VILL.- BARVITHA,
P.S.- CHHAYGAON,
DIST.- KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MRS. K K CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

18.01.2023.

Heard Mrs. K.K. Choudhury, learned counsel for the applicant. Also heard Mr. BB Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

Apprehending arrest in connection with the Chhaygaon P. S. Case No.182/2022, under Section 376 of the IPC, read with Section 4 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Janab Ali @ Janaf Ali, for grant of pre-arrest bail.

It is to be noted here that the above noted case has been registered on the basis of an F.I.R., lodged on 25.02.2022, by one Jabbar Ali to the effect that on 21.02.2022, at about 4:00 P.M., while he and his wife was not present in their house, one Janab Ali, taking advantage of their absence, committed rape upon his 15 years old daughter, Smti X (name withheld), and his wife has seen the accused committing rape upon his daughter and though she tried to apprehend him, the accused fled away from the place of occurrence.

Mrs. Choudhury, learned counsel for the applicant submits that there is delay in lodging the FIR and the informant has also filed an application to the Officer-in-Charge, Goroimari Police Out Post to the effect that he is unable to pursue the case and decided to withdraw the same and out of suspicion, he lodged the case against the accused and therefore, it is contended to allow the petition.

On the other hand, by producing the Case Diary before this Court, Mr. BB Gogoi, learned Addl. P.P., Assam submits that the I.O. has collected sufficient materials against the accused, as alleged in the FIR and therefore, Mr. Gogoi contended to dismiss the petition.

Having heard the submission 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 produced before this Court with the assistance of Mr. B.B. Gogoi, learned Addl. P.P., Assam.

It appears that the I.O. has collected sufficient materials in support of the allegation made in the FIR. Considering the statement of the victim girl recorded under Section 164 CrPC, as well as the statement of her mother, who happens to be eye witness of the occurrence and also considering the nature of accusation and punishment prescribed for the same, this Court is of the opinion that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant and therefore, the same stands dismissed.

The case diary be returned.

JUDGE

Comparing Assistant