

GAHC010266442022



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

Case No. : AB/3813/2022

GAJIBAR RAHMAN AND ANR
S/O- LT. ALI ABZAL, R/O- VILL- SATIHARA, P.S. SHYAMPUR, IN THE
DIST.OF DARRANG, ASSAM

2: SHAHAJAMAL
S/O- LT. ALI ABZAL
R/O- VILL- SATIHARA
P.S. SHYAMPUR
IN THE DIST.OF DARRANG
ASSA

VERSUS

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

Advocate for the Petitioner : MR. S K ROY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 07-02-2023

Heard Mr. K Rahman, learned counsel for the applicant and also
heard Mr. P.S. Lahkar, learned Addl. PP, Assam.

Apprehending arrest in connection with Shyampur PS case No.70/2022, under sections 120(B)/366/376/342/506 IPC read with section 4 of POCSO Act, 2012 corresponding to GR Case No.1514/2022, this application under section 438 Cr.P.C., is preferred by applicants **1. Gajibar Rahman & 2. Shahjamal**, for grant of pre arrest bail.

The said case has been registered on the basis of an FIR lodged by one Altaf Hussain on 27.08.2022, to the effect that accused **1)** Jahidul Islam, **2)** Rahim Ali, **3)** Gajibar Rahman and **4)** Shahjamal, kidnapped his minor daughter (Smti X, 16 years) on 23.05.2022, at about 11.00 PM, and taken her to Mowamari Chapari in a boat and there, the accused No.1 Jahidul Islam committed rape upon her and accused Rahim Ali, Gajibar Rahman and Shahjamal have tried to solemnize her marriage forcefully with Jahidul Islam.

Mr. Rahman, learned counsel for the applicant submits that this is second anticipatory bail application and it is being preferred by the applicants on the new ground that the investigation of the case has been progressed sufficiently in the meantime and the father of the main accused, namely, Rahim Ali was arrested and he has already been enlarged on bail by this Court vide order dated 08.12.2022 in Bail Appln No.3300/2022 and that as investigation has progressed sufficiently, the question of hampering investigation or tampering the witnesses does not arise and they are ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

On the other hand, Mr. P.S. Lahkar learned Addl. PP has produced the case diary before this Court and submits that the victim has implicated both the applicants in her statement under section 164 Cr.P.C., and that the case is pending for arrest of the co accused and therefore, Mr. Lahkar contended to dismiss the petition.

Having heard the submission of learned Advocates for both the sides, 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. PP.

It appears that though the case has been registered under section 120(B)/366/376/342/506 IPC, yet, the allegations revealed against the present applicant relates to offence under section 120B/366 IPC only.

Further, it appears that the earlier petition under section 438 Cr.P.C., preferred by the applicants was rejected vide order dated 16.12.2022, in AB No.3569/2022, and since then the IO has got sufficient time for investigation and it also appears that the IO has arrested one of the accused, namely, Rahim Ali and he has already been enlarged on bail by this Court vide order dated 08.12.2022. The I.O got sufficient time for investigation and he achieved substantial progress.

Having regard to the submissions advanced at the bar and also having regard to the nature of accusations and the punishment prescribed for the same, and further considering the stage of investigation, custodial interrogation of the applicant seems to be unwarranted here at this stage in the interest of investigation and therefore, this Court is inclined to allow this petition.

Accordingly, it is provided that, in the event of arrest of the applicant in connection with the aforementioned case, the above named applicants shall be enlarged on pre arrest bail on their executing a bail bond of Rs.25,000/- each, with a suitable surety of the like amount, to the satisfaction of the arresting authority. The above privilege of the pre-arrest bail is, however, subject to the following conditions.

1. The applicants shall make themselves available before the Investigating Officer for interrogation as and when required.

2. The applicants 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 them from disclosing such facts to the Court or to any police officer.

3. The applicants shall not leave the territorial jurisdiction of learned Special Judge, POCSO, Darrang, Mangaldoi without prior permission.

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

The case diary be returned.

JUDGE

Comparing Assistant