

GAHC010267832022



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

Case No. : AB/3798/2022

SHAHAJAHAN ALI AND ANR.
S/O IBRAHIM ALI
R/OVILL- RAJABALA
BHALUK KANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR, ASSAM, PIN-783127

2: JOHIRUL ISLAM
S/O BAHAR ALI
R/OVILL- RAJABALA
BHALUK KANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-78312

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M Z SHAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

17.01.2023

Heard Mr. M.Z. Shah, learned counsel for the applicant and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with South Salmara P.S. Case No. 368/2022, under Sections 120(B)/366/376/313/34 of the IPC read with section 4 of the POCSO Act and read with sections 3/4 of the DV Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Shahajahan Ali and Johirul Islam for grant of pre-arrest bail.

3. The said case has been registered on the basis of one F.I.R., lodged by Smti X [name withheld], to the effect that she has love affairs with one Shahajahan Ali about 2 years 3 months back, and about 2 years back he eloped her from her house and accused, Shahajahan Ali committed sexual intercourse with her against her will. As a result, she become pregnant and on the advice of the accused No. 3, Ibrahim Ali she was taken to Gauripur Nursing Home for abortion of her pregnancy and Shahajahan Ali left her in his house after subjecting her both physical and mental cruelty. On 12.09.2022, accused No. 3, Ibrahim Ali has taken her to Meghalaya and kept her in the house of one unknown person by saying that Shahajahan Ali will come and take her back and after elapse of 25 days no one came to her and then she met one of her maternal uncle and came to the house of Shahajahan Ali, but Ibrahim Ali has prevented her from entering into his house.

4. Mr. Shah, learned counsel for the applicant submits that there was love affairs

between the applicant No. 1 and the informant, and the applicant No. 2 is relative of the applicant No. 1 and he is no way involved with the offence alleged in the FIR and the applicants are ready to cooperate with the investigating agency, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor, by producing the case diary before this court submits that at the relevant point of time the victim was minor and her date of birth is 15.05.2008 and she has implicated both the applicants with the offence alleged in the FIR, and therefore, Mr. Gogoi contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully perused the petition and the documents placed on the record and also perused the case diary with the assistance of Mr. Gogoi, learned Addl. P.P.

7. In view of the materials so far collected in the case diary, especially in view of the statement of the victim girl, recorded under section 164 of the Cr.P.C. and also in view the nature and gravity of the offence, this court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant No. 1, Shahajahan Ali. Accordingly, the prayer of the applicant No. 1, Shahajahan Ali stands dismissed.

8. However, considering the submission of learned counsel for both the parties and also considering the materials collected so far in the case diary, especially the role played by the applicant No. 2, Johirul Islam, as is evident from the statement of the victim girl and other witnesses, this court is of the view that his custodial interrogation is unwarranted in the interest of investigation.

8. Accordingly, it is provided that in the event of arrest of the applicant No. 2, namely, Johirul Islam, in connection with South Salmara P.S. Case No. 368/2022, under Sections 120(B)/366/376/313/34 of the IPC read with section 4 of the POCSO Act and read with sections 3/4 of the DV Act, he shall be enlarged on pre-arrest bail on executing a bond of Rs. 25,000/- only with one surety of like amount to the satisfaction of the arresting authority.

9. The above privilege is, however, subject to the following conditions:

(i) that the applicant shall make himself available for interrogation by the Investigating Officer as and when required;

(ii) that the applicant 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 him from disclosing such facts to the Court or to any police officer; and

(iii) that the applicant shall not leave the jurisdiction of the learned learned CJM, South Salmara Mankachar, without prior permission.

10. Accordingly, this AB stands disposed of.

11. The case diary be returned.

JUDGE

Comparing Assistant