

GAHC010002962024



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

Case No. : AB/50/2024

MINHAJUR RAHMAN @ MINHAJUL HOQUE
S/O - OSMAN GANI PERMANENT RESIDENT OF - VILLAGE- JAURIMARI,
PO- SHONABARI, P.S- KALGACHIA, DISTRICT- BARPETA, ASSAM, PIN -
781321

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY ITS PUBLIC PROSECUTOR. ASSAM

2:SHOHIDUL ISLAM
S/O- ABDUL KHALEQUE
VILL- BALIKURI N.C
PS- KALGACHIA
BARPETA
ASSA

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

11.03.2024

Heard Mr. A.K. Azad, learned counsel for the applicant; Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent; and Mr. A.T. Sarkar, learned counsel for the respondent No. 2.

2. This application, under Section 438 of the Code of Criminal Procedure, is preferred by applicant namely, **Minhajur Rahman @ Minhajul Hoque**, who has been apprehending arrest in connection with **Kalgachia P.S. Case No. 92/2023**, under Sections 120(B)/354(C) of the IPC read with Section 66(E) of the IT Act and read with Section 4 of the POCSO Act, for grant of pre-arrest bail.

3. The said case has been registered on the basis of one FIR lodged by one Shahidul Islam, on 20.06.2023. The essence of allegations made in the FIR is that in the year 2020-21, while his daughter Smti 'X' (name withheld) was studying in the Kalgachia Junior Ajmal College, fell in love with one Mehbub Hoque and taking chances of that relationship he captured some obscene photographs and videos of her, in his mobile phone. Thereafter, on 23.04.2023, her marriage was solemnized with one Minhajul Hoque and thereafter, both Mehbub Hoque and Minhajul Hoque had hatched a conspiracy and made those photographs and videos viral in the social media and thereby harm her reputation.

4. Mr. Azad, learned counsel for the applicant submits that the applicant is innocent and no way involved with the offence alleged in the FIR. Mr. Azad further submits that after completion of the investigation the IO has laid charge sheet against the applicant, under Sections 120(B)/354(C) of the IPC, read with Section 66(E) of the IT Act. Mr. Azad also submits that though the case is registered under Section 4 of the POCSO Act, yet, the Section 4 of the POCSO Act is not attracted here in this case and that the applicant is ready to face the trial and will appear before the learned court below on each and every date and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Barua, learned Additional Public Prosecutor

fairly submits that though the case is registered under Sections 66(E) of the IT Act and 4 of the POCSO Act, yet, the Section 4 of the POCSO Act is not attracted here in this case and the Section 66(E) of the IT Act is bailable offence.

6. Whereas, Mr. Sarkar, learned counsel for the respondent No. 2 has also adopted the submission so advanced by Mr. Barua, learned Additional Public Prosecutor.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned court below.

8. It appears that after completion of the investigation the IO has laid charge sheet against the applicant, under Sections 120(B)/354(C) of the IPC, read with Section 66(E) of the IT Act. Further, it appears that though the case is registered under Sections 66(E) of the IT Act and 4 of the POCSO Act, yet, the Section 4 of the POCSO Act is not attracted here in this case and the Section 66(E) of the IT Act is bailable offence.

9. Since the case has already been charge sheeted, this court is inclined to dispose of this anticipatory bail application by directing the applicant to appear before the learned **Special Judge, POCSO, Barpeta** on or before 01.04.2024, and to apply for regular bail and in event of filing such an application, the learned Court below shall consider the same in accordance with law.

10. In the interim, it is provided that in the event of arrest of the applicant in connection with **Kalgachia P.S. Case No. 92/2023**, under

Sections 120(B)/354(C) of the IPC read with Section 66(E) of the IT Act and read with Section 4 of the POCSO Act, he shall be released on pre-arrest bail on his executing a bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the arresting authority, till his appearance before the learned Court below on or before 01.04.2024.

11. The above privilege is however subject to the following conditions:-

[i] The applicant shall appear before the court of learned **Special Judge, POCSO, Barpeta**, on or before 01.04.2024; and

[ii] The applicant shall not leave the jurisdiction of the learned court below without prior permission;

12. In terms of above, this AB stands disposed of.

Comparing Assistant

JUDGE