

GAHC010004822024



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

Case No. :AB/96/2024

SHOFIQUE UDDIN
S/O SAHER UDDIN AND
R/O KADAMONI PATHAR

P.S. JURIYA
NAGAON
ASSAM
PIN-782124

VERSUS

ABDUL MUTALLIB AND ANR
S/O HAFIZ UDDIN

KADAMONI PATHAR

P.S. JURIA
DIST. NAGAON
ASSAM

2:THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. A LAL

Advocate for : PP

ASSAM appearing for ABDUL MUTALLIB AND ANR

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

21.02.2024

Heard Mr. A. Lal, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

This is an application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Special (POCSO) Case No.197/2022, under Sections 376/511 *read with* Section 8 of the POCSO Act, which is pending for disposal before the Court of learned Special Judge, POCSO, Nagaon.

The scanned copy of the LCR as well as the Case Diary has been received and I have perused the same.

Mr. Lal, learned counsel for the petitioner has submitted that a false and concocted allegation has been brought against the accused/petitioner. He also submits that the case has already been charge-sheeted under Section 376/511 *read with* Section 8 of POCSO Act. It is contended by the petitioner that he is a teacher by profession and he was discharging his duty, but, during the entire investigation of the case, the police never searched for him and he was not aware about the pendency of the case. Subsequently, he was shown as absconding in the charge-sheet under Section 376/511 *read with* Section 8 of POCSO Act. Thus, there is an every possibility of being arrested in connection with this case, hence, present application has been filed seeking for pre-arrest till his appearance before the learned Trial Court. He is ready and willing to appear before the Trial Court on each and every date fixed by the said Court and till then, he may be protected.

In support of his submission, he relies on the decision passed by the Co-

Ordinate Bench of this Court reported in **2020 SCC Online Gau 3007 (Pranab Roy vs. State of Assam)**, and submitted that "the police could not have declared the petitioner to be an absconder in the charge-sheet and it is only the Court who can pass a judicial order to declare a person to be an absconder".

In this context, Mr. Das, learned Additional Public Prosecutor submits that the accused/petitioner has been shown as absconding in the charge-sheet as well as there is sufficient materials available in the Case Diary and the statement made by the witnesses under Sections 161 & 164 of Cr. P. C. However, he submits that the interim protection may be given to the accused/petitioner with a direction to appear before the learned Trial Court on the date fixed by the said Court.

Considering the submissions of learned counsels for both sides and also I have perused the scanned copy of the LCR as well the Case Diary which reveals that the summon was issued against the accused/petitioner and he accordingly, appeared through his engaged counsel on 19.01.2024 and filed a petition which was allowed, fixing the same for appearance on 27.03.2024. The Case Diary also revealed that, though the I.O has reported that the accused/petitioner was evading the police arrest during the investigation, but there is no such note of the I.O that the he has made an endeavor to interrogate the accused/petitioner during the investigation of this case.

Thus, considering the entire facts and circumstance of this case, I hereby direct the accused/petitioner to appear before the learned Trial Court within 15 (fifteen) days from today and on his appearance and on his filing a petition for grant of regular bail and the learned Court below shall consider the same in accordance with law. And, till then, it is directed that no coercive action shall be taken against the accused/petitioner.

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

Return the LCR as well as the Case Diary.

JUDGE

Comparing Assistant