

GAHC010008982024



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

Linked Case : AB/167/2024

MOISER ALI
S/O LATE TAHAJ UDDIN
R/O PADMERALGA PART-I
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP
ASSAM

2:SURAJ JAMAL
S/O LATE JIRU MALLICK
R/O PADMERALGA PART-I
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

02.02.2024

Heard Mr. A. Ahmed, learned counsel appearing for the petitioner. Also heard Mr. B. B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the

State respondent. Learned counsel for respondent No.2 has received notice but none has appeared.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioner, namely, **Moiser Ali** apprehending his arrest in connection with **Special Case No. 244/2022** arising out of **Fakirganj PS Case No. 138/2021** registered u/s **120(B)/376(3) of IPC, R/W Section 4 of POCSO Act.**

It is submitted on behalf of the petitioner that summons have been issued against the petitioner under Section 319 Cr.P.C. during trial on the basis of the deposition of PW-1 and 2 summons have been issued against the petitioner. The petitioner is apprehending arrest as similarly circumstanced co-accused were also forwarded to custody by the trial court after summons were issued against the co-accused under Section 319 Cr.P.C. It is submitted that initially Final Report was submitted against the co-accused and this case was proceeding only against the prime accused i.e. accused No.1 named in the FIR. But the trial court on the basis of deposition of PW-1 and 2 issued summons to the present petitioner along with other co-accused namely, Rupchan Ali, Bahar Ali, Suna Uddin, Saidul Islam.

Mr. B. B. Gogoi, learned Addl. Public Prosecutor, Assam has submitted that pre-arrest bail petition under Section 438 Cr.P.C. is not maintainable as charge has been framed under Section 376(3) IPC and the trial has commenced on the basis of charges under Section 376(3) IPC. To this the learned counsel for the petitioner has submitted that charges have been framed only against the prime accused i.e. the accused No.1 named in the FIR.

It is submitted that no overt act has been attributed to any other accused except the accused No.1 and the accused is entitled to pre-arrest bail. This is

not a case under Section 376(3) IPC or under Section 4 of the POCSO Act as no overt act has been attributed to the petitioner.

I have considered the submissions at the bar with circumspection. The petitioner is hereby directed to appear before the learned trial court and apply for regular bail which may be considered by the court as per the merits of the case.

JUDGE

Comparing Assistant