

GAHC010012352024



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

Case No. : AB/172/2024

ANUP NATH BHOWMIK
S/O NIKHIL NATH BHOWMIK
R/O RANGPUR KANDIGRAM PART-III
P.S. SILCHAR (SADAR)
DIST. CACHAR, ASSAM

VERSUS

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

2:DIPTI CHANDA
W/O LATE PRADIP CHANDA
R/O RANGPUR KANDIGRAM PART-III

P.S. SILCHAR (SADAR)
DIST. CACHAR
ASSAM
PIN-78800

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 22.02.2024

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Mr. A.

Ahmed, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Additional Public Prosecutor for the State and Ms. B. Sharma, learned legal aid counsel appointed as *Amicus Curiae* for the respondent No.2.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Anup Nath Bhowmik**, in connection with **Silchar P.S. Case No. 2369/2023**, registered under Section **342/506/354 IPC r/w Section 10 POCSO Act**.

Mr. Choudhury, learned Senior counsel for the petitioner has submitted that the petitioner is no way connected with the alleged offence. He further submits that the petitioner has been falsely implicated in the instant case. It is also submitted that on the alleged date of occurrence, the informant along with her daughter came to the grocery shop of the petitioner which is nearby the house of the informant and attached to his house. At that time, the petitioner was not present inside the shop but went out nearby keeping his wife in the shop. Then the informant noticing the absence of the petitioner, engaged herself in talking with the petitioner's wife while the victim went inside the shop and took out some money from the cash box at the instance of the informant. However, the petitioner's wife noticed the victim taking out money from the cash box and caught her which led to an altercation between the informant and the petitioner's wife. At that moment, the petitioner also arrived and on knowing about it, warned the informant to hand over the money from the victim who had taken out from the cash box otherwise, he would call the police. Then the informant handed over the money to the petitioner from the victim. Thereafter, the instant case has

been lodged after 8 days of the incident. It is also alleged that in fact, after 2/3 days, the informant started demanding money from the petitioner but the petitioner refused to pay the amount to the informant.

It has been submitted by the learned Senior counsel for the petitioner that the incident occurred on 04.12.2023 but the FIR was lodged on 12.12.2023. Regarding delay, it is stated in the FIR that although the mother of the victim tried to settle the matter but she failed to do so and subsequently, she lodged the FIR. Under such backdrop and considering the nature of offence, the pre-arrest bail may be granted to the petitioner.

On the other hand, Mr. Goswami, learned Addl.P.P. has submitted that the victim is 11 years old. As per statement of the victim recorded under Section 164 Cr.P.C., it was alleged that the petitioner touched her breast and pulled down under garments. He further submits that the prayer of the petitioner may not be considered at this stage.

Ms. Sharma, learned legal aid counsel for the respondent No. 2 also stated in the same tune that there is sufficient materials against the petitioner to be involved in the alleged offence.

I have considered the submissions made by the learned counsel for the parties. Perused the case diary.

Though the mother of the victim i.e. informant stated that on the basis of the statement of the victim, she lodged the FIR but as per statement of the victim, it is not reflected that she was found in the bed inside the room of the petitioner and tried to commit rape on her. There is no explanation regarding delay of eight days in lodging the FIR.

Considering the facts as well as the materials available thereon, this Courts finds that custodial interrogation of the petitioner is not required for the purpose of investigation of the case. Therefore, he is granted the privilege of pre-arrest bail.

Accordingly, it is provided that in the event of arrest of the petitioner, named above, in connection with **Silchar P.S. Case No. 2369/2023**, registered under Section **342/506/354 IPC r/w Section 10 POCSO Act**, he shall be released on furnishing bail bond of **Rs.10,000/-** with a **suitable surety** of the like amount, to the satisfaction of the arresting authority.

The direction for pre-arrest bail is subject to the conditions that the petitioner:

(a) shall appear before the Investigating Police Officer within ten days from today and shall co-operate with the investigation;

(b) 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;

(c) shall not commit such offence as alleged in the FIR in future.

The anticipatory bail application stands disposed of.

Return the case diary.

JUDGE

Comparing Assistant