

GAHC010017812024



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

Case No. : AB/219/2024

SOFIQL ISLAM @ ALOM
S/O ABDUS SAMAD BEPARI
R/O SALMARA PT. VIII, P.O. BONDIHANA, P.S. BOGRIBARI, DIST.
KOKRAJHAR, ASSAM, PIN-783349

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PUBLIC PROSECUTOR, ASSAM

2:JABED ALI MONDAL
S/O UNKNOWN
R/O VILL- RANGAMATI PT.II
P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR P K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

13.03.2024

Heard Mr. P.K. Das, learned counsel for the applicant and Mr. B. Sarma,
learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the **Bogribari P.S. Case No. 107/2023**, under Sections 365/376(3)/506 of the IPC read with Section 4 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Sofiqul Islam @ Alom** for grant of pre-arrest bail.

3. The above noted case has been registered on the basis of an FIR, lodged by one Smti 'X' (name withheld), on 02.09.2023. The essence of allegation made in the FIR is that on 01.09.2023, at about 8:30 am, she came to Markaz Academy situated at Panbari, but she was not aware that the school was closed on that day. Then her boyfriend Sofiqul Islam along with two of his friends namely, Muzarof Ahmed and Raju came there in one Maruti car and asked her to board on the vehicle and told her that they will drop her in her house. But, instead of dropping her in her house, they have taken her towards Bagribari and also taken her towards a place namely, Angarkata and there Sofiqul Islam committed rape upon her, under threat.

4. It is to be noted here that vide order dated 16.02.2024, an issue regarding maintainability of this petition was raised, as the case has been registered under Section 376(3) of the IPC, in view of the provision of Section 438(4) of the Cr.P.C.

5. Mr. Sarma, learned Additional Public Prosecutor has produced the case diary before this Court and referring to the birth certificate of the victim girl, which is available in the case diary, submits that the date of birth of the victim girl was 15.10.2008, and as such, her age was below 18 years, on the relevant date of occurrence and she was a 'child', as defined in Section 2(d) of the POCSO Act. Mr. Sarma referring to the statement of the victim girl recorded under Section 164 of the Cr.P.C., submits that she has clearly implicated the present applicant with the offence alleged in the FIR. Mr. Sarma further submits that as there are sufficient

materials against the present applicant, this anticipatory bail application is not maintainable, in view of Section 438(4) of the Cr.P.C.

6. Having heard the submission 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 Case Diary produced before this Court with the assistance of learned Additional Public Prosecutor.

7. The case diary indicates that the date of birth of the victim girl was 15.10.2008, and as such, her age was below 18 years on the relevant date of occurrence and she was a 'child', as defined in Section 2(d) of the POCSO Act. Further, it appears from the statement of the victim girl recorded under Section 164 of the Cr.P.C., she has clearly implicated the present applicant with the offence alleged in the FIR.

8. In view of above, this Court is of the view that this application is not maintainable, as there exist a bar under Section 438(4) of the Cr.P.C.

9. Accordingly, this application is dismissed.

10. The case diary be returned.

JUDGE

Comparing Assistant