

GAHC010022622024



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

Case No. : AB/278/2024

MAHIDUL HUSSAIN @ MAHIDUL ISLAM
S/O MANIK SK.
VILL- KORAITARY (SAGOLCHORA)
P.O. AND P.S. FAKIRGRAM
DIST. KOKRAJHAR, BTR, ASSAM

VERSUS

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

2:FIROJA BIBI
W/O ALI AKBAR
VILL- KUARPAR
P.O. JALABILA
P.S. BAGRIBARI
DIST. KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

11.03.2024

Heard Mr. A.T. Sarkar, learned counsel for the applicant; Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent; and Mr. J.

Islam, learned counsel for the respondent No. 2.

2. Apprehending arrest in connection with the **Bagribari P.S. Case No. 129/2023**, under Sections 448/376(3)/363/506 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, **Mahidul Hussain @ Mahidul Islam** for grant of pre-arrest bail.

3. It is to be noted here that the said case has been registered on the basis of one F.I.R., lodged by one Firoja Bibi, on 16.10.2023. The essence of allegation made in the FIR is that on 20.07.2023, at about 3 pm, while other family members were absent in the house, one Mahidul Hussain committed rape upon her daughter Smti 'X' (name withheld), aged 14 years, and threatened her not to disclose the incident to others.

4. Mr. Sarkar, learned counsel for the applicant submits that there was love affair between the informant and the applicant and that the applicant is no way involved with the offence alleged in the FIR and that he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Sarma, learned Additional Public Prosecutor has produced the case diary before this Court and referring to the statement of the victim girl, recorded under Section 164 of the Cr.P.C. submits that she has clearly implicated the applicant with the offence alleged in the FIR and that at the relevant time the age of the victim girl was 14 years 6 months and that the investigation is still going on and therefore, it is contended to dismiss the petition.

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. In view of the materials so far collected in the case diary, especially the statement of the victim girl recorded under Section 164 of the Cr.P.C. and considering the age of the victim girl, as revealed from the Birth Certificate of the victim girl, issued by the Department of Health Services, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant.

8. Accordingly, the same is dismissed.

9. The case diary be returned.

JUDGE

Comparing Assistant