

GAHC010027132024



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

Case No. : AB/350/2024

RAFIKUL ISLAM
S/O JUMAR ALI
R/O VILL- LATIBARI
P.O. AND P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM
PIN-783382

2: ABU SHAMA
S/O KADER ALI
R/O VILL- NALDOBA
P.O. AND P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN-78338

VERSUS

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

2:AZID ALI
S/O LT. BHUMOR ALI
R/O VILL -MALEGARH PATHAR
P.O. AND P.S.- JOGIGHOPA

DISTRICT- BONGAIGAON

ASSAM
PIN-78338

Advocate for the Petitioner : MR G CHAMUAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 12-03-2024

Heard Mr. G. Chamuah, learned counsel for the petitioner as well as Mr. MP Goswami, learned APP for the State.

2. The petitioners, namely, (1) Rafikul Islam and (2) Abu Shama who are apprehending arrest in connection with Jogighopa P.S. Case No. 368/2019 under sections 366/376(3) I.P.C. read with section 6 of the POCSO Act corresponding to the Special (P) case no.49(J)/2021, have filed this application under section 438 Cr.P.C., praying for pre-arrest bail.

3. The learned APP submits that if the offence is committed under section 376(3) or section 376 AB or section 376 DA or section 376 DB IPC the prayer for pre-arrest bail does not lie as per provision of section 438(4) Cr.P.C.

4. The learned counsel for the petitioner submits that he has nothing to say if there is a procedural bar to consider the pre-arrest bail in connection with the alleged offence.

5. I have considered the submission of the learned counsel for the parties. I have also perused the provision of section 438(4) Cr.P.C. which reads as follows:

“(4) Nothing in this section shall apply to any case involving the arrest of any person

on accusation of having committed an offense under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860)."

6. In view of the above, the bail application is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant