

GAHC010038682024



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

Case No. : AB/501/2024

ABDUL KASEM
S/O ABDUL HAI
R/O NO. 1 BHATIAKHALI
P.S. LOWKHOWA, P.O. KATHPARA
DIST. NAGAON

VERSUS

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

2:NUR ISLAM
S/O ABDUL SALAM
VILL- 2 NO. ADABHETI
P.S. SOOTEA
DIST. BISWANAT

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24-06-2024

1. Heard Ms. G. Borah, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State as well as Ms. N. Hassan, learned counsel for the respondent No. 2.

2. This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Abdul Kasem*, who is apprehending his arrest in connection with Special POCSO Case No. 76/2022 arising out of Sootea P.S. Case No. 13/2021 under Section 365 of the Indian Penal Code read with Section 4 of the POCSO Act, 2012.

3. The gist of the accusation in this case is that the father of the victim had lodged an FIR on 26.01.2021 before the Officer-in-Charge of Sootea Police Station, *inter alia*, alleging that the present petitioner had kidnapped his minor daughter in a four-wheeler on 25.01.2021.

4. The learned counsel for the petitioner has submitted that there is a love affair between the petitioner and the victim girl. It is also submitted by the learned counsel for the petitioner that the victim girl is the cousin sister of the petitioner and the allegations made in the FIR are not true. It is also submitted by the learned counsel for the petitioner that though the charge-sheet has been laid in this case against the petitioner showing him as an absconder, he never received any summons from the trial court and now he has come to know that the trial court has issued non-bailable warrant against him.

5. On the other hand, Ms. N. Hassan, learned counsel for the informant, who is the father of the victim daughter had submitted that the father of the victim girl has no objection if the petitioner is granted bail as he had lodged the FIR out of anger.

6. On the other hand, learned Public Prosecutor has pointed out that in her statement which was recorded under Section 164 of the Code of Criminal Procedure, 1973 the victim has implicated the present petitioner.

- 7.** Though, the father of the victim girl has made no objection against the prayer for grant bail of the present petitioner as the POCSO Case No. 76/2022 is pending before the trial court, this court is of considered opinion that trial court is the best court to consider the prayer for bail during the pendency of the trial.
- 8.** Hence, the petitioner is directed to appear before the trial court within seven days from the date of this order and thereafter, may make prayer for bail before the said Court, if so advised.
- 9.** If, such prayer is made by the petitioner, the trial court shall consider such prayer taking into consideration all relevant facts as well as law in this regard.
- 10.** With the above observation, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant