

GAHC010041802024



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

Case No. : AB/493/2024

KHAIRUL ISLAM AND ANR
S/O JOYNAL SK @ ABEDIN
RESIDENT OF VILLAGE RAJAPARA PART II, PO AND PS BAGRIBARI, DIST
KOKRAJHAR, ASSAM, ASSAM 783348

2: SHAHEB ALI SHEIKH
S/O LATE ABDUL HUSSAIN
RESIDENT OF VILLAGE RAJAPARA PART II
PO AND PS BAGRIBARI
DIST KOKRAJHAR
ASSAM
ASSAM 78334

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 11.03.2024

Heard Mr. T.J. Mahanta, learned Senior counsel, assisted by Mr. H.R. Ahmed,

learned counsel for the applicants. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Bagribari P.S. Case No. 06/2024, under Sections 120B/376/384/354/406/506 of the IPC, read with Sections 66(A)/67 of the IT Act, this application under Section 438 Cr.P.C. has been preferred by the applicants, namely, Khairul Islam and Shaheb Ali Sheikh, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Smt. X (name withheld) on 21.01.2024. The essence of allegation made in the FIR dated 21.01.2024, is that one Khairul Islam, who happens to be the friend of the husband of the informant, used to visit her house and since November, 2022, he used to commit sexual intercourse with her against her will and also threatened her not to disclose the same to anybody else, and he also committed theft of the video of sexual intercourse between her and her husband and circulated the same amongst his friends. Thereafter, one Shaheb Ali Sheikh and Saddam Hussain started blackmailing her and also touched her and on 22.12.2023, at about 12 noon, they entered into her house and attempted to commit forceful sexual intercourse with her, but, somehow she managed to escape.

4. Mr. Mahanta, learned Senior counsel for the applicants submits that there is a delay of 26 days in lodging the FIR and that admittedly, the informant is a consenting party and she is also not trustworthy and there is no independent witness to support her version, and that the applicants are ready to cooperate with the investigating agency, and therefore, Mr. Mahanta has contended that the privilege of pre-arrest bail may extended to the applicants.

5. On the other hand, Mr. B. Sarma, learned Addl. Public Prosecutor has

produced the case diary before this Court and submits that the I.O. has collected sufficient incriminating materials in support of the allegation made in the FIR, and therefore, Mr. Sarma has opposed the application.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and also perused the case diary with the assistance of Mr. B. Sarma, learned Additional Public Prosecutor.

7. It appears that the I.O. has collected sufficient incriminating materials against the applicants, investigation is going on and enlarging the applicants on pre-arrest bail, at this stage, will disturb the investigation.

8. Having regards to above and having regards to the nature and gravity of the offence and punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicants, and accordingly, this application stands dismissed.

9. Case diary be returned.

JUDGE

Comparing Assistant