

GAHC010042442024



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

Case No. : AB/559/2024

SHAHJAHAN ALI AND ANR
S/O- MUSLIM UDDIN, VILL- PURAGAON, P.S. SORBHOG, DIST.- BARPETA,
ASSAM

2: AHAMAD ALI
S/O- ABDUS SAMAD
VILL.- PURAGAON
P.S. SORBHOG
DIST.- BARPETA ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY P.P., ASSAM

2:ABDUL KADER
S/O- ABDUL KADDUS
VILL- PURAGAON
P.S. SORBHOG
DIST.- BARPETA
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

09.04.2024

Heard the learned counsel Mr. I.A. Hazarika appearing for the petitioners. Also heard Ms. N. Das, the learned Addl. Public Prosecutor representing the State of Assam.

2. This is an application under Section 438 of the CrPC in respect of Gobardhana P.S. case No.15/2024 under Sections 376(3)/34 of the Indian Penal Code R/W Section 10 of the Protection of Children from Sexual Offence Act, 2012.

3. On the day of occurrence, Samiya Khatun was travelling in an auto rickshaw along with her two granddaughters, namely- Manjula Khatun and Mausum Ahmed. The auto rickshaw was driven by the petitioner Ahamad Ali and the said auto rickshaw was shared by another petitioner Shahjahan Ali. It was evening at that time. The auto rickshaw was stopped at the place called Tilabori. The petitioner Shahjahan Ali gagged the mouth of the 11 year old Manjula Khatun and forcibly dragged her to a nearby jungle. On the other hand, the petitioner Ahamad Ali had also gagged the mouth of Samiya Khatun. Inside the jungle, Shahjahan tried to disrobe Manjula Khatun. When she raised alarm, both the petitioners fled.

4. The learned counsel for the petitioners pointed out that on an earlier occasion, an FIR was lodged against the niece of the informant alleging similar occurrence.

5. I have considered the submissions of the learned counsel of both sides.

6. In this case, the statement of the 11 year old girl Manjula Khatun and Samiya Khatun were recorded under Section 164 of the CrPC, which clearly implicate the present two petitioners with the alleged offence.

7. Therefore, this Court is of the opinion that both the petitioners, namely-

Shahjahan Ali and Ahamad Ali do not deserve to be based out with the provision of law as laid down under Section 438 of the CrPC. Their pre-arrest bail application is rejected.

The application for bail is disposed of.

JUDGE

Comparing Assistant