

GAHC010050472024



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

Case No. : AB/667/2024

ABIKUL SHEIKH @ AFIKUL SHEIKH
S/O LATE JOYNAL ABEDIN
VILL- GHILAGURI
P.S. BONGAIGAON
DIST. BONGAIGAON, ASSAM
PIN-783372

VERSUS

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

2:TARA BHANU BIBI
W/O SAJAHAN ALI
VILL- GHILAGURI
P.S. BONGAIGAON

DIST. BONGAIGAON
ASSAM
PIN-78337

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 18.06.2024

Heard Mr. A. Choudhury, learned counsel for the petitioner. Also heard Mr. R. J. Boruah, learned Additional Public Prosecutor for the State respondent No.1 and Mr. S. Islam, learned counsel for the respondent No.2.

This is an application under Section 438 of the Code of Criminal Procedure for granting the privilege of pre-arrest bail to the accused petitioner, who is apprehending arrest in connection with Bongaigaon P.S. Case No. 76/2024, under Section 376/511 of the Indian Penal Code, *read with* Section 8 of the POCSO Act, 2012.

CD has already been received. Perused the same. Heard both the sides.

It is submitted by Mr. A. Choudhury, learned counsel for the petitioner that from the plain reading of the FIR itself, it is seen that there is no attempt of committing rape on the victim, though the case has been registered under Section 376/511 of the Indian Penal Code, *read with* Section 8 of the POCSO Act, 2012, as it seems to be quite improbable that any person can tend their cows in the night hours at around 10.30 PM. At best, the case may attract Section 354(A) of the Indian Penal Code, which is a bailable offence or may attract under Section 8 of the POCSO Act, wherein the Police should take the resort of Section 41 of the Code of Criminal Procedure. Further, he submitted that the girl proposed the accused petitioner to marry her to which he refused and for that reason only the FIR has been lodged with some false allegation

against the present accused petitioner. He is a boy of 23 years of age and neighbor of the informant and will cooperate with the Investigating Officer in further investigation of this case, if he is granted with the privilege of pre-arrest bail.

In this context, Mr. R. J. Boruah, learned Additional Public Prosecutor for the State respondent, has submitted that from the materials available in the Case Diary, it is a case under Section 376/511 of the Indian Penal Code, however, there are also materials to attract the case under Section 8 of the POCSO Act as the victim was admittedly minor at the time of the alleged incident.

Mr. S. Islam, learned counsel for the respondent No.2, also submitted in this regard that there may not be an attempt of rape but the girl was molested and therefore it attracts Section 8 of the POCSO Act, as the girl being a minor of 13 years of age. Accordingly he raised objection and submitted that it is not a fit case wherein the accused petitioner can be granted with the privilege of pre-arrest bail.

Considering the entire submissions made by the learned counsels for both the sides, materials available in the Case Diary as well as the other aspects of the case, I find it a fit case to extend the privilege of pre-arrest bail to present accused petitioner.

Accordingly, it is provided that in the event of arrest of the accused/petitioner, namely, Abikul Sheikh @ Afikul Sheikh, in connection with Bongaigaon P.S. Case No. 76/2024, under Section 376/511 of the Indian Penal Code, *read with* Section 8 of the POCSO Act, 2012, he shall be enlarged on pre-

arrest bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the arresting authority, subject to the following conditions:

(I) that the petitioner shall appear before the Investigating Officer of the case within a period of 1 (one) week from today;

(ii) that the petitioner shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the investigation of the aforesaid P.S. Case; and

(iii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

The anticipatory bail application stands disposed of in terms above.

The Case Diary be sent back.

JUDGE

Comparing Assistant