

GAHC010050652024



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

Case No. : AB/638/2024

SHOHIDUR RAHMAN
S/O LT. ALI HUSSAIN, VILL- BOROKALIA SHARSHO (MATIFATA), P.O.-
BARKALIA SERSO, P.S.-FAKIRGANJ, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:TAHER ALI BHUYAN
S/O BANI HUSSAIN BHUYAN
VILL-AMBARI BHUYAN PARA
P.S.-FAKIRGANJ
DIST-DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

09.04.2024

1. Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor appearing for the State of

Assam as well as Mr. S. Ahmed, learned counsel for the informant.

2. This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Shohidur Rahman, who is apprehending his arrest in connection with Fakirganj P.S. Case No. 06/2024 under Section 6 of POCSO Act, 2012.

3. The gist of accusation in this case is that on 22.01.2024, the father of the victim boy had lodged an FIR(First Information Report) before the Officer-In-Charge of Fakirganj Police Station, *inter-alia*, alleging that the petitioner had subjected him to forceful intercourse on several occasions by threatening him.

4. Learned counsel for the petitioner has submitted that the petitioner is the Head Teacher of Darul Uloom Shahi Madrassa and one Jelhoque, who is the Head Teacher of Chotlarpar Matifata Madrassa had a dispute between with him with regard to the enrolment of students in the Madrassa of the present petitioner, therefore, he has made a conspiracy to damage the reputation of the present petitioner.

5. Learned counsel for the petitioner has also submitted that the FIR in this case has been lodged after a period of one year of the alleged offence, which itself shows that the petitioner has been falsely implicated in this case.

6. It is also submitted by the learned counsel for the petitioner that the father of the victim has compromised the matter with the petitioner and in that regard, a mutual agreement has also been executed between the father of the victim as well as the present petitioner.

7. On the other hand, learned Additional Public Prosecutor, has vehemently opposed the grant of anticipatory bail to the present petitioner on the ground that the victim boy, who is 11 years of age has implicated the petitioner in his statement made under Section 164 of the Code of Criminal

Procedure, 1973.

8. Learned Additional Public Prosecutor has also submitted that the petitioner is an influential person of his locality and he may interfere in the investigation, if anticipatory bail is granted to him.

9. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record, including the case diary of Fakirganj P.S. Case No. 06/2024.

10. On perusal of the statement of the victim boy recorded under Section 164 of the Code of Criminal Procedure, 1973, it appears that the victim boy has vividly narrated the incident which occurred with him and how he was sexually abused by the present petitioner on several occasions. Moreover, on perusal of the mutual agreement, copy of which has been annexed at Annexure-A to the petitions, by the present petitioner, it appears that the main reason for entering into the mutual agreement is that the village enderes as well as the well wishers of the locality insisted to compromise the matter amicably between the parties, though the alleged offence is anon compoundable offence.

11. Considering the statement of the victim boy recorded under Section 164 of the Code of Criminal Procedure, 1973 in which he has made vivid description of the alleged incident and has made incriminating revelations against the present petitioner, this court is not inclined to grant the benefit of an order under Section 438 of the Code of Criminal Procedure, 1973 in favour of the present petitioner.

12. In view of above, the prayer for anticipatory bail is rejected and this bail application is dismissed.

JUDGE

Comparing Assistant