

GAHC010051952024



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

**Case No. : AB/656/2024**

RASHIDUL ALI FAKIR  
S/O MD. HARMUJ ALI FAKIR, RESIDENT OF MOKRAPARA, P.O.  
KASHIPARA, P.S. KOKRAJHAR (SADAR), DIST - KOKRAJHAR, BTR, ASSAM  
PIN - 783370

VERSUS

THE STATE OF ASSAM  
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

2:NASKAR ALI  
S/O LATE NASER ALI SHEIKH  
RESIDENT OF MOKRAPARA  
P.O. KASHIPARA  
P.S. KOKRAJHAR (SADAR)  
DIST- KOKRAJHAR  
BTR  
ASSAM PIN - 783370

**Advocate for the Petitioner : MR. A A R KARIM**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**21.06.2024**

**1.** Heard Mr. A.A.R. Karim, learned counsel for the petitioner. Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor appearing for the State of Assam, as well as Mr. S. Nawaz, learned Amicus Curiae appointed by this Court to defend the cause of respondent No. 2.

**2.** This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Rashidul Ali Fakir, who is apprehending his arrest in connection with Kokrajhar P.S. Case No. 41/2019 under section 366/376 of the Indian Penal Code, 1860 read with section 4 of the POCSO Act, 2012 corresponding to G.R. Case No. 88/2019.

**3.** The gist of accusation in this case is that on 30.01.2019, the father of the victim girl had lodged an FIR before the Officer-In-Charge of Kokrajhar Police Station, against the present petitioner *inter alia*, alleging that on 28.01.2019, at about 8:00 PM, the petitioner eloped his minor daughter with him.

**4.** It is also stated in the FIR that on 30.01.2019, the informant received a call over mobile phone No. 847396693 that if the marriage between the petitioner and the victim is solemnised, they will return back to their home.

**5.** On receipt of the said FIR, Kokrajhar P.S. Case No. 41/2019 was

registered.

**6.** The learned counsel for the petitioner has submitted that the allegation of committing offence under section 376/366 of the Indian Penal Code made against the petitioner is not true.

**7.** It is submitted by the learned counsel for the petitioner that the petitioner was having a romantic relationship with the victim girl and the victim girl went with him on her own.

**8.** The learned counsel for the petitioner has also submitted that in the meanwhile, one of the co-accused has already been released on bail, however, when the present petitioner has approached the Court of learned Additional Sessions Judge, Kokrajhar, his prayer for anticipatory bail was rejected on the ground that the investigation has been completed and the charge-sheet has been submitted.

**9.** On the other hand, the learned Additional Public Prosecutor has produced the case diary of Kokrajhar P.S. Case No. 41/2019 and has submitted that the charge-sheet is yet to be submitted in this case, though, it is ready for submissions and the investigation has also completed.

**10.** The learned Amicus Curiae has also made similar submission like that of learned Additional Public Prosecutor. He has submitted that as the investigation has already completed, there is no apprehension of the petitioner getting arrested in this case and as the POCSO Court has power to grant bail for all the offences under which this case has been registered, he may approach the Trial Court and pray for bail before the

said court.

**11.** I have considered the submission made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and the learned Amicus Curiae and has perused the case diary of Kokrajhar P.S. Case No. 41/2019.

**12.** Apparently, it appears that the observations made by the learned Additional Sessions Judge, Kokrajhar, by its order dated 06.02.2024 passed in Misc. Criminal Case No. 06/2024 is not correct to the extent that the charge-sheet has been submitted, as the same is still available in the case diary.

**13.** On perusal of the statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973 in this case, it appears that victim has not implicated the present petitioner and she has stated that she was having love affair with the present petitioner and accompanied the petitioner on her own sweet will.

**14.** As it appears that the investigation in this case has already been completed and the charge-sheet is ready to be submitted. However, it also appears that the Investigating Officer has not recorded the statement of the accused persons and he has not been examined. Hence, the danger of his getting arrested, as apprehended by the petitioner, still looms large on him.

**15.** Hence, the petitioner is directed to appear before the Investigating Officer within 10 days from the date of this order and his statement may be recorded by the Investigating Officer. If he does so

within the stipulated period of time, in the event of his arrest in connection with Kokrajhar P.S. Case No. 41/2019, the above named-petitioner shall be allowed to go on interim bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

- (i) the petitioner shall co-operate in the investigation; and (ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court.

**16.** The office of the public prosecutor shall ensure that the case diary reaches the Investigating Officer before lapse of the 10 days from the date of this order, so that the petitioner may surrender before the Investigating Officer.

**17.** With the above observations, this bail application is hereby disposed of.

**JUDGE**

**Comparing Assistant**