

GAHC010052062023



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

Case No. : AB/848/2023

ABU SIDDIQUE AND ANR
S/O MD. SATTAR ALI
R/O VILL- KANAIMARA PART-I,
P.O. KANAIMARA, P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR, ASSAM

2: MD. SATTAR ALI
S/OMD. BAKTAR ALI
R/O VILL- KANAIMARA PART-I

P.O. KANAIMARA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M A ISLAM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 22.02.2024

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

2. Apprehending arrest in connection with South Salmara P.S. Case No. 44/2023, under Sections 9/10/11 of the Prohibition of Child Marriage Act, 2006, read with Sections 6/17 of the POSCO Act, this application under Section 438 Cr.P.C. has been preferred by the applicants, namely, Abu Siddique and Md. Sattar Ali, 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 Abdul Korim, on 02.02.2023. The essence of allegation made in the FIR dated 02.02.2023, is that Abu Siddique of village Kanaimara Pt. I, recently married a young girl who is below permissible age of marriage, by taking advantage of her poor financial condition and also by inducement.

4. Mr. Islam, learned counsel for the applicants submits that the applicants had been granted the privilege of interim pre-arrest bail, vide order dated 23.03.2023, and pursuant to the said order, they have also appeared before the I.O. and they have been cooperating with the investigating agency, and therefore, a contention is being made that the interim order dated 23.03.2023, may be made absolute in the same terms and conditions.

5. On the other hand, Mr. B. Sarma, learned Addl. Public Prosecutor submits that he has not received the case diary.

6. But, it appears that the interim protection was granted to the applicants,

vide order dated 23.03.2023, and since then, as many as nine opportunities were afforded to the learned Addl. Public Prosecutor to produce the case diary before this Court. But, in spite of getting sufficient opportunities, the learned Addl. Public Prosecutor has failed to produce the case diary before this Court, and therefore, this Court is inclined to dispose of this application on the basis of the materials available on the record.

7. It appears that the applicants were granted the privilege of pre-arrest bail, vide order dated 23.03.2023, and it is the categorical submission of learned counsel for the applicants that pursuant to the said order, the applicants have appeared before the I.O. and cooperating with the investigating agency. It is also a categorical submission the learned counsel for the applicants that Abu Siddique is now happily married with the victim girl and they are blessed with children and the applicant No. 2 is the father of the applicant No. 1, and without ascertaining the fact, the informant has lodged the case against the applicants.

8. In view of the submission of the learned counsel for the applicants and also considering the facts and circumstances on the record, custodial interrogation of the applicants may not be warranted here in this case and accordingly, the interim order dated 23.03.2023, is hereby made absolute with the same terms and conditions.

9. In terms of above, this application stands disposed of.

JUDGE

Comparing Assistant