

GAHC010059232024



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

Case No. : AB/758/2024

S.M. MEHEDI HASSAN @ MEHEDI (RAKHIBUL ISLAM) AND 2 ORS
S/O LATE ABDUL HAKIM SK.
R/O VILL- JANGAL, P.S. MANKACHAR, AND DIST. SOUTH SALMARA
MANKACHAR, ASSAM

2: ROFIK ISLAM @ RAFIK ALI
S/O ROHIM UDDIN SK.
R/O VILL- JANGAL
P.S. MANKACHAR
AND DIST. SOUTH SALMARA MANKACHAR
ASSAM

3: MAHMUDUL HASSAN @ HASIFUL
S/O LATE ABDUL HAKIM SK.
R/O VILL- JANGAL
P.S. MANKACHAR
AND DIST. SOUTH SALMARA MANKACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. RASHIDUL ISLAM

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

27.03.2024

Heard the learned counsel Mr. A. Ahmed appearing for the petitioners as well as Mr. R.J. Baruah, learned Addl. Public Prosecutor representing the State of Assam.

2. This is an application under Section 438 of the CrPC in respect of Mankachar P.S. Case No.70/2024, registered under Sections 354(A)/354(C)/354(D)/341/376(1)/34 of the Indian Penal Code, read with Section 67(A) of Information Technology Act, 2000.

3. It is alleged in the FIR that the present three petitioners had committed rape upon the informant on 11.03.2024 at about 4 A.M. while her husband was absent from home. It is further alleged that they had taken some nude photographs and uploaded those nude photographs in Whatsapp.

4. It may be stated that prior to lodging this FIR, on 01.03.2024, the informant lodged another FIR before police alleging that the petitioners S.M. Mehedi Hassan @ Rakhibul Islam and Rofik Islam @ Rafik Ali used to play cricket by the side of her house and also were doing various illegal activities. She further alleged in the said FIR that those two persons had captured bad photos of the informant without her knowledge and uploaded those photographs in Whatsapp.

5. It has been submitted that the aforesaid FIR dated 01.03.2024, did not disclose any cognizable offence as because the informant woman failed to produce those photographs before police and no action was taken against the present two petitioners. It is stated that the present FIR has been filed alleging rape only to teach a lesson to the petitioners.

6. Mr. Baruah submits that the victim woman has implicated the petitioners S.M. Mehedi Hassan @ Rakhibul Islam and Rofik Islam @ Rafik Ali in her statement under Section 164 CrPC. According to Mr. Baruah, she failed to implicate the other petitioner

Mahmudul Hassan. The only allegation against these petitioners is that they had uploaded those nude photographs of the informant woman.

7. I have considered the submissions made by the learned counsel of both sides in the light of the materials available on record.

8. This Court is of the opinion that the petitioners do not deserve to be detained in custody for the allegations brought against them. Therefore, their pre-arrest bail application is allowed.

9. It is hereby directed that in the event of arrest of the petitioners, namely- (1) S.M. Mehedi Hassan @ Rakhibul Islam, (2) Rofik Islam @ Rafik Ali and (3) Mahmudul Hassan @ Hasiful in connection with Mankachar P.S. Case No.70/2024, registered under Sections 354(A)/354(C)/354(D)/341/376(1)/34 of the Indian Penal Code, read with Section 67(A) of Information Technology Act, 2000, they shall be allowed to go on bail of ₹20,000/- with sureties of like amount to the satisfaction of the arresting authority.

10. The above named petitioners shall appear before the Police Investigating Officer within next 7(seven) days and also co-operate with the police investigation as and when called for.

JUDGE

Comparing Assistant