

GAHC010073332024



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

Case No. : AB/950/2024

MD. MERAJUL ISLAM
S/O HAJARAT ALI, R/O VILL- CHALCHALI (AMTOL), P.S.-NAGAON SADAR,
DIST- NAGAON, ASSAM

VERSUS

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

2:MD. NURUL ISLAM
S/O LATE ABDUL MANNAS
R/O VILL- GERUWAMUKH
P.S.-KHATOWAL
DIST-NAGAON
ASSAM (INFORMANT)

Advocate for the Petitioner : MR. B M CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 10.05.2024

Heard Mr. B.M. Choudhury, learned counsel for the petitioner. Also heard Mr.

R.J. Baruah, learned Additional Public Prosecutor for the State and Mr. A. Sharma, learned counsel for the respondent No. 2.

2. By filing this bail application under **Section 438 Cr.P.C.**, the petitioner, **Md. Me rajul Islam** has prayed for pre-arrest bail, who is apprehending arrest in connection with **Special POCSO Case No. 274/2023**, under Section 376(3)/313 IPC r/w Section 4(2)/6 of POCSO Act, pending in the court of learned Additional Sessions Judge cum Special Judge (POCSO), Nagaon.

3. It is submitted by the learned counsel for the petitioner that as per medical report, the victim was around 19 years of age on the date of incident when examined by the doctor, as such the provision of POCSO Act is not attracted herein this case. It is further submitted that in the FIR, there is no mention of any date when the incident occurred. The FIR was lodged in the year 2023 and it is mentioned in the FIR that prior to two years of filing the FIR, the incident occurred. It is also submitted that charge-sheet has been laid and the petitioner is ready to face the trial. Considering the background of the case and the nature of the offence, benefit of pre-arrest bail may be extended to the petitioner.

4. On the other hand, Mr. Baruah, learned Additional Public Prosecutor for the State has vehemently opposed in granting bail to the petitioner. It is also submitted that as charge-sheet has been submitted, the petitioner may be directed to appear before the learned trial court seeking regular bail.

5. Mr. Sharma, learned counsel for the respondent No. 2 has submitted that there is sufficient incriminating materials against the petitioner as

alleged in the FIR. It is also submitted that the victim was minor at the relevant time of the incident. Considering the nature of offence, the prayer of the petitioner may not be considered at this stage.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the trial court record.

7. It appears that one school certificate of the victim is available in the record from which it reveals that the date of birth of the victim is 02.01.2007. The FIR was lodged on 02.05.2023. Though no date is mentioned in the FIR, however, if the incident occurred in the year 2023, in such case also the victim was minor, about 16 years of age. From the statement of the victim recorded under Section 164 Cr.P.C., it reveals that due to such physical relationship with the petitioner, several times she become pregnant and her pregnancy was terminated by administering medicine which was brought by the petitioner.

8. Considering the fact as well as background of the case, this Court is not inclined to grant bail to the petitioner. Hence, prayer for bail is rejected.

9. However, the petitioner is directed to surrender before the learned trial court and in the event of filing any bail application, the same will be considered by the learned trial court in accordance with law.

10. The pre-arrest bail application stands disposed of accordingly.

JUDGE

Comparing Assistant