

GAHC010077522024



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

Case No. : AB/1016/2024

SABIR HUSSAIN
S/O LT. SAIDUR RAHMAN, R/O BAMUNGAON, P.S.-LANKA, DIST- HOJAI,
ASSAM, PIN-782446

VERSUS

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

2: SOFATUN NESSA
W/O LATE IDDIS ALI
R/O VILL- BAMUNGAON
P.S.-LANKA
DIST-HOJAI (ASSAM)
PIN-78244

Advocate for the Petitioner : MR. M A LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

06.06.2024

1. Heard Mr. M. A. Laskar, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State.

2. The present application is filed under Section 438 of Code of Criminal Procedure, 1973, seeking privilege of anticipatory bail, by the petitioner, namely, **Sabir Hussain** in connection with Lanka Police Station Case No. 81/2024 registered under Sections 376 of IPC read with Section 4 of POCSO Act, 2012.
3. The informant in the case is the mother of the victim who is aged about 16 years.
4. Notice was issued to the informant on 08.05.2024 which was duly served upon the said informant and she is represented by the learned counsel.
5. The case diary is received. Perused the same.
6. From the case diary, it is seen that the statement of the victim has been recorded under Section 164 of Cr.P.C. The said statement reveals that the minor victim girl has specifically implicated the present petitioner in commission of the offence.
7. However, surprisingly, the informant i.e. mother of the victim has filed an affidavit in this case inter alia, alleging that the informant is no longer interested to proceed with the case inasmuch as according to her such F.I.R., was lodged due to some monetary dispute between the petitioner and the informant and such monetary dispute has been settled by payment of Rs. 1,80,000/- to the informant. Such affidavit was filed on 27.05.2024.
8. It is also the case of the informant that at the instigation of the people of her locality, she lodged the F.I.R. against the present petitioner.
9. The School Certificate of the victim reveals that her date of birth is 23.07.2007. She has also been medically examined. Her statement was recorded by the Magistrate on 04.03.2024 and an affidavit has been filed on 27.05.2024. The victim also stated that alleged rape was witnessed by her brother and statement

of the brother also fortifies such allegation.

10. In view of the aforesaid materials, the informant's consent in the considered opinion of this Court, cannot be treated as valid consent in the eyes of law for compromise of a sexual offence/assault on a minor.
11. The allegation made in the FIR involves heinous and serious offence against a child. Such offence is not private in nature and is having serious impact on the society. Therefore, the consent of compromise given by the parents/guardians of minor victim cannot have any validity in the eye of law when it comes to the question of the withdrawal of prosecution involving heinous and serious offences like rape.
12. At the one hand, if such kind of situations or actions are allowed at the behest of the informant, there is probability of misuse a criminal process and on the other hand, there is possibility of withdrawal of prosecution on the basis of compromise entered by the parents, when the actual sexual victim discloses the fact of commission of an offence.
13. In that view of the matter and in view of the material available, the bail application stands dismissed.
14. Return back the case dairy.

JUDGE

Comparing Assistant