

GAHC010081052024



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

Case No. : AB/1074/2024

RATAN KR. CHOUDHURY @ RATAN CHOUDHURY AND ANR.
S/O LATE MANKANTA CHOUDHURY
R/O VILL- KACHUARKHAS PART-I
P.S. DHUBRI,
DIST. DHUBRI, ASSAM,
PIN-783301

2: SHIBU RAM CHOUDHURY @ CHIBU CHOUDHURY
S/O LATE MANKANTA CHOUDHURY
R/O VILL- KACHUARKHAS PART-I
P.S. DHUBRI

DIST. DHUBRI
ASSAM

PIN-78330

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PP, GOVT. OF ASSAM

2:PREMNATH CHOUDHURY
S/O LT. KHETI CHOUDHURY
R/O VILL- KACHUWARKHAS PART-I
P.S. AND DIST. DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. B. K. Mahajan

Advocate for the Respondent : Mr. R. J. Baruah, Addl. PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

18.06.2024

Heard Mr. B. K. Mahajan, learned counsel for the petitioners. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No.1 and Ms. D. Saikia, learned Amicus Curiae for the respondent No.2.

This application filed under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/petitioners, who are apprehending arrest in connection with Dhubri P.S. Case No.75/2024 under Sections 365/343/376/325/294/34 of IPC *read with* Sections 6 of the POCSO Act.

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioners, Mr. Mahajan, that the present petitioners are not at all involved in the alleged incident, however, their names has been mentioned by the victim only because, they are the relatives of the prime accused namely Biswajit Choudhury. He also submitted that as per the statement of the victim recorded under Section 161 of Cr. P.C., she did not uttered anything against the accused/petitioners and the said victim had brought the allegation only against the said prime accused, Biswajit Choudhury, who sexually assaulted her. But, under Section 164 of Cr.P.C., she brought some allegations regarding the presence of present petitioners in the car, along with the prime accused. He further submitted that the accused/petitioner No. 2 is a police personal, and he was on duty at Bijni w.e.f. 05.03.2024 to 13.03.2024 and thus, the allegation made by the informant against the present petitioners are totally false and concocted one and their names have been

falsely implicated in the case only because they are the relatives of the prime accused. Further, the accused/petitioners are still ready and willing to co-operate with the I.O. in further investigation of the case, if they are granted the privilege of interim pre-arrest bail.

On the other hand, Mr. Baruah, learned Additional Public Prosecutor has submitted that, from the statement of the victim, it is seen that at the time of her abduction, the petitioners along with the prime accused were present along with one Swapan Kr. Choudhury. Accordingly, he submitted that the victim girl had mentioned the names of the present petitioners stating that they were involved in kidnapping her. He admitted the fact that there is no allegation of sexual assault against the accused/petitioners.

In this regard, Ms. Saikia, learned Amicus Curiae appearing on behalf of the respondent No.2 has submitted that in the statement recorded under Section 164 of Cr. P. C., the victim has brought the allegation against the accused/petitioners stating that they were also present in the car when she was kidnapped. Though, she admitted the fact that no allegation of sexual assault has been brought against the accused/petitioners, but, she raised objection in granting bail to the present accused petitioners for the interest of investigation and interrogation to the accused/petitioners in connection with this case.

Considering the submissions of learned counsels of both sides and also considering the nature of offence as well as the materials in the Case Diary i.e the statements of the victim recorded under Sections 161 and 164 Cr.P.C., I find that custodial interrogations of the present accused/petitioners are not necessary in this case and therefore, I find it a fit case to grant the privilege of pre-arrest bail to the accused/petitioners.

Accordingly, it is provided that in the event of arrest of the accused/petitioners, namely, Ratan Kr. Choudhury @ Ratan Choudhury and Shibu Ram Choudhury @ Chibu Choudhury in connection with Dhubri P.S. Case No.75/2024 under Sections 365/343/376/325/294/34 of IPC *read with* Sections 6 of the POCSO Act, they shall be enlarged on pre-arrest bail on their executing a bond of Rs. 20,000/- (Rupees twenty thousand) only each with one surety of like amount to the satisfaction of the arresting authority, subject to the following conditions:

- (I) that the petitioners shall make themselves available for interrogation by the Investigating Officer within 7(seven) from today.
- (ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioners shall not leave the jurisdiction of the concerned jurisdictional Magistrate, without prior permission.

In terms of above, this anticipatory bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant