

GAHC010098292024



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

Case No. : AB/1293/2024

MONIRUL ISLAM
S/O KAMAL SHEIKH
R/O VILL- NAGARJHAR
P.O. AND P.S. MANIKPUR
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND
REPRESENTED BY THE PP, ASSAM

2:RAHMAN ALI
S/O JUBBAR ALI
A RESIDENT OF VILL- SHILGHAGRI
P.S. MANIKPUR
DIST. BONGAIGAON
ASSAM

3:XXXX
BEING MINOR
AS SUCH REPRESENTED BY HER NATURAL FATHER VIZ. JUBBAR ALI
A RESIDENT OF VILL- SHILGHAGRI
P.S. MANIKPUR
DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR A DASGUPTA, MR J K SHARMA
Advocate for the Respondent : PP, ASSAM, MR. N ALI(R-2)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

05.08.2024

Heard Mr. A. Dasgupta, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Addl. Public Prosecutor, Assam appearing for the State respondent No.1 and Mr. N. Ali, learned counsel for the respondent No.2.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioner, namely, **Monirul Islam**, apprehending his arrest in connection with **Manikpur P.S. Case No. 61/2024** registered u/s **448/363/376(3) of IPC r/w Section 6 of POCOS Act**.

It is submitted by the learned counsel for the petitioner that the petitioner and the victim, aged about 16 years were in love and when the victim was forced to get married with someone else against her will by her family members, she went to the house of the petitioner. The parents of the petitioner convinced her to return back to their house with commitment to bring her as daughter-in-law when she would attend the age of majority. Thereafter, in a village meeting it was decided that the petitioner would marry the victim girl or he would pay a compensation of Rs.5,00,000/- to her family members. Out of this discord, the FIR has been lodged.

On the other hand, Mr. R. J. Baruah, learned Additional Public Prosecutor has produced the case diary and submitted that the victim has implicated the petitioner before the Magistrate in her 164 Cr.P.C. statement and as per statement of the victim, the petitioner had committed the alleged offence of sexual assault on several times.

Mr. N. Ali, learned counsel for the respondent No.2 also made objection on granting bail to the petitioner.

I have heard the learned counsel for both the parties and also perused the case diary.

Perusal of case diary reveals sufficient incriminating materials against the petitioner that the victim was sexually abused on several occasions.

Hon'ble Supreme Court has observed that 'love affair' is not a ground to grant bail in sexual offence.

In the decision of the Apex Court reported in [2022 SCC OnLine SC 1529] Sumitha Pradeep v. Arum Kumar C.K. and Another, when the Court granted anticipatory bail to an accused, the matter was challenged before the Apex Court, the Apex Court set aside the order granting anticipatory bail, after referring the order with particular mention, as stated in paragraph Nos. 10 to 16 as under:

10. The High Court, while granting anticipatory bail to the respondent No. 1 herein (original accused), observed in para 9 of the impugned order something which has really disturbed us. Para 9 reads thus:-

"9. With the above principle in mind, when the facts of the case are noticed, it is revealed that the petitioner is the maternal uncle of the victim to whose house the victim went in December, 2021. On 14.12.2021, the victim is alleged to have been asked to sit on the lap of the petitioner, who thereafter is alleged to have hugged and kissed the victim on her cheeks. Though on the one side, there is a possibility of such hugs and kisses being manifestations of affection by an uncle, one cannot ignore the possibility of such show of 'affections' being coloured by sexual overtones. However, those are all matters for investigation."

11. In our considered opinion, the observations made in Para 9 of the impugned order are totally unwarranted and have been made overlooking the specific allegations contained in the FIR, duly supported with the Statement of the victim - girl child under Section 164 of the Code.

12. In a case containing such serious allegations, the High Court ought not to have exercised its jurisdiction in granting protection against arrest, as the Investigating Officer deserves free-hand to take the investigation to

its logical conclusion. It goes without saying that appearance before the Investigating Officer who, has been prevented from subjecting Respondent No. 1 to custodial interrogation, can hardly be fruitful to find out the prima facie substance in the allegations, which are of extreme serious in nature.

13. The fact that the victim girl is traumatized to such a high degree that her academic pursuits have been adversely impacted alone, coupled with the legislative intent especially reflected through [Section 29](#) of the POCSO Act, are sufficient to dissuade a Court from exercising its discretionary jurisdiction in granting pre-arrest bail.

14. It may be true, as pointed out by learned counsel appearing for Respondent No. 1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No. 1 for custodial interrogation for the purpose of further investigation.

15. Be that as it may, even assuming it a case where Respondent No. 1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up

against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

Going by the ratio of *Sumitha Pradeep* case (supra) in cases containing such serious allegations, this Court is not inclined to grant bail to the petitioner. It appears that in cases of this nature where the ingredients to attract offence alleged by the prosecution are well made out, simply because the victim is about 16-17 years of age is not a ground to grant anticipatory bail to the accused in any manner.

In view of above, the pre-arrest bail application of the petitioner stands rejected.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant