

GAHC010100472024



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

Case No. : AB/1313/2024

MD. KABIR ALI @ SELIM AKHTAR
S/O MD. SUKUR ALI
R/O VILL- VTC- KURIHAMARI
P.O. BHANGNAMARI
P.S. SIALMARI
DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.07.2024

Heard Mr. B Choudhy, learned counsel for the petitioner and Mr. B. Sarma, learned Addl. Public Prosecutor appearing on behalf of the State respondent.

This is an application under Section 438 of the Cr.P.C., seeking anticipatory bail by the petitioner namely **Kabir Ali @ Selim Akthar** in

connection with Sialmari P.S. Case No. 3/2024 (Corresponding to G.R. Case No. 84/2024) under Sections 9/ 10/ 11(i) of the Prohibition of Child Marriage Act, 2006.

Case diary is received and perused.

Heard both sides.

Mr. Choudhury, the learned counsel for the petitioner has submitted that the present petitioner is innocent and he has not committed any offence as alleged in the F.I.R.. He also submits that the petitioner got married with the victim as they had love affairs. More so, as per the birth certificate of the victim, the victim is aged about 18 to 19 years of age at the relevant time of her marriage. Further, the case is not registered under Section 313 IPC, though the allegation of abortion was brought in the FIR. Both the accused and the victim are residing at Nalbari and there is no chance of absconding of the accused and the accused is now willing to cooperate with the investigation. Mr. Choudhury submits that it is a fit case wherein the privilege of pre-arrest bail may be granted to the petitioner.

In this context, Mr. Sarma, the learned Addl. Public Prosecutor has submitted that there are sufficient incriminating materials against the present petitioner and the statement of the victim girl recorded under Section 164 Cr. P.C. also implicate the accused, which reflects that her pregnancy was terminated and it is seen that forcefully committed sexual intercourse with her for which she got pregnant. He has submitted that the I.O. has collected school certificates from which it is seen that at the relevant time of her marriage, she was below 18 years of age. Further he submitted that during investigation, the learned Court below added section 366 IPC read with Sections 6/ 17 of POCSO

Act on the prayer made by the I.O., hence, it is not a fit case to extend the benefit of pre-arrest bail to the petitioner.

Hearing the submission made by the learned counsel for both the parties and on perusal of the case diary, it is seen that as per school certificate, the victim was a minor at the relevant time of incident. However, the authenticity of the birth certificate may be decided by the Court below at the time of trial. But considering the materials available on record, more specifically, the statement of the victim girl recorded under Section 164 Cr.P.C., this Court is of the view that it is not a fit case to extend the benefit of pre-arrest bail to the petitioner.

In view of the above, the prayer for pre-arrest bail stands rejected at this stage.

Return the case diary.

The bail application is dismissed.

JUDGE

Comparing Assistant