

GAHC010108152024



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

Case No. : AB/1410/2024

MD. KAYADUL HUSSAIN
S/O ASAB UDDIN
RESIDENT OF GAMARIA, PO R.K NAGAR, PS R.K NAGAR DIST
KARIMGANJ, ASSAM 788166

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:XXX
D/O KHALIL UDDIN
VILLAGE CHINANAI
PO R.K NAGAR
PS R.K NAGAR
DIST KARIMGANJ
ASSAM 78816

Advocate for the Petitioner : MR. S I KHAN, MR. A K TALUKDAR, MR S ISLAM

Advocate for the Respondent : PP, ASSAM, MS. R B BORA (R-2), MS. R B BORA (LEGAL AID
COUNSEL FOR R-2)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29-10-2024

1) Heard Mr. A. K. Talukdar, learned counsel for the petitioner and Ms. S. H. Borah, learned Additional Public Prosecutor, Assam for the State. Also heard Ms. R. B. Bora, learned Legal Aid Counsel for the Victim/Opposite Party No.2.

2) Apprehending his arrest, the petitioner, namely, **Md. Kayadul Hussain**, son of Asab Uddin, resident of Village-Gamaria under Ram Krishna Nagar Police Station of District-Karimganj, a charge sheeted accused, has filed this application under Section 438 CrPC praying for his pre arrest bail in Special (POCSO) Case No. 36/2023, arising out of Ram Krishna Nagar Police Station Case No. 22/2023, corresponding to GR Case No. 319/2023 in which the learned Special (POCSO) Judge, Karimganj-cum-Additional Sessions Judge, Karimganj on 02.09.2023 took cognizance of the offence under Section 376 IPC, read with Section 9 of the Prohibition of Child Marriage Act, read with Section 6 of the POCSO Act and issued summons to him wherein he did not appear.

3) It is to be noted here in that father of the petitioner, namely Asab Uddin, another charge sheeted accused of said RK Nagar PS Case No. 22/2023, under Section 11 of the Prohibition of Child Marriage Act, read with Section 17 of the POCSO Act was already arrested in said Special (POCSO) Case on 04.02.2023 and later he was released on bail by the said Special Court vide order dated 17.02.2023 as the said Court found that it is the petitioner who allegedly married the concerned minor victim girl.

3) As per the FIR dated 02.02.2023 of the case lodged by the Secretary of Gamaria Gaon Panchayat that one minor girl, name withdrawn, aged about 17 years has been married to the petitioner, who is adult and from RK Nagar Police Station, District Karimganj and that the family members of the husband/petitioner facilitated the marriage and other persons helped in solemnizing the said child marriage that took place in a traditional manner in presence of relatives of both the minor victim girl and the groom/petitioner. The informant/complaint in

his said FIR indicated that because of the said marriage the minor victim girl is pregnant. As such by it, the complainant requested the police authority to take necessary legal action against the preparators since the child marriage is illegal and that the minor victim has become pregnant.

4) Accordingly, RK Nagar PS Case No. 22/2023 under Section 376 IPC, read with Section 9/10/11 of the Prohibition of Child Marriage Act, read with Section 6/17 of the POCSO Act was registered on 02.02.2023 itself. After completion of the investigation of the case the concerned Investigating Officer submitted the Charge Sheet in said RK Nagar PS Case vide CS No./ 67/2023 dated 31.05.2023 against the petitioner, Kayadul Hussain under section 376 IPC, read with Section 9 of the Prohibition of Child Marriage Act, read with Section 6 of the POCSO Act and against the father of the petitioner under Section 11 of the Prohibition of Child Marriage Act, read with Section 17 of the POCSO Act.

5) Petitioner stated that the alleged victim girl to his knowledge is more than 19 years at the time of marriage and was not under aged below 18 years as stated by the complainant/informant.

6) it is also stated by the petitioner that the informant/complaint Gaon Panchayat Secretary is a corrupt person and in connivance with the elected President of Gamaria Gaon Panchayat and some elected Ward Members of said Panchayat misappropriated huge amount of money from several developmental schemes of the government meant for Gamaria Gaon Panchayat area. An amount of ₹15,76,500/- was sanctioned in the financial year 2021 for construction of the only road of Gamaria village with ACC Block Toppings, but only by doing some artwork, the entire amount was misappropriated by the authorities of said Gamaria Gaon Panchayat against which a complaint was filed before the Block Development Officer, Ramkrishna Nagar Development Block by the villagers of Gamaria village led by the petitioner. The informant/complainant, elected Gram Panchayat President and some Ward Members though created heavy pressure upon the petitioner and some other persons of the village to withdraw the said complaint lodged against them, directing them not to pursue with the said complaint, but the complaining villagers and the petitioner refused to comply with such force of the informant/complainant. As such the President of the Gram Panchayat with the

informant/complainant and other Ward Members vowed to take revenge upon the petitioners and others saying that they will be taught a lesson.

7) The petitioner went on saying that at the time of filing of the FIR of the case in hand there was a State wide drive by the Government wherein hundreds of such cases were registered throughout the State of Assam and in almost all such cases bail was granted by the Court. It is stated that taking that as a chance, the complainant/informant inconvenience with the elected Panchayat President filed the FIR of the present case against the petitioner so as to take revenge against him with regard to the complaint that was filed before the BDO of Ramakrishna Nagar against gross misappropriation of Panchayat fund.

8) The petitioner further stated that as per Mohammedan Law more particularly Section 8(1) of the Assam Muslim Marriages and Divorce Registration Act, 1935 as amended and Rule 26(1) of the Assam Muslim Marriage and Divorce Registration Rules 1935; marriage under 18 years of age is not prohibited under Mohammedan Law.

9) The petitioner also contended that the investigating officer of the case is very much aware of the actual truth involved in the case who never made even a phone call to him for his appearance before the said authority or in the police station nor issued any notice for his appearance so as to investigate the case. As the chargesheet in the case has already been filed and the process of trial of the case has already begun, therefore, there being no chance of hampering or tempering the evidence or the witnesses by the petitioner, as such the petitioner prayed that he should be considered for his pre arrest bail in said Special (POCSO) Case No. 36/2023 arising out of RK Nagar PS Case No. 22/2023.

10) Earlier, the Court by order dated 31.05.2024 called for the records of said Special (POCSO) Case No.36/2023 from the Court of learned Special (POCSO) Judge, Karimganj and in the interim directed not to take any coercive action against the petitioner till receipt of such record. Said interim order dated 31.05.2024 is still in force.

11) Perused the records of Special (POCSO) Case No.26/2023 that was called for by order dated on 31.05.2024. On being enquired Mr Talukdar learned counsel for the petitioner submitted that the special act like POCSO Act, 2012 will prevail over the personal law, i.e., Mohammedan Law.

12) It is seen from the records of the case that after registration of said RK Nagar PS Case No. 22/2023 on 02.02.2023, when the investigating officer of the case tried to record the statement of the minor victim, she told him that she is pregnant. As such on 24.02.2023 she was sent to Ram Krishna Nagar Block Primary Health Centre for her medical examination. On her medical examination the Medical and Health Officer of R K Nagar BPHC, District-Karimganj found the said minor victim with approximately 28 weeks of Gestational Size (pregnancy). Later, said minor victim gave birth to a baby.

13) From the records it is seen that police seized the school certificate of the minor victim girl issued by the authorities of her school, wherein her date of birth is recorded as 9th March 2006 and that the petitioner brought her to his house in the year 2022. It is also seen that the minor victim girl was married while she was only 16 years old and she became pregnant at the age of 16 years and few months while she was a minor and further gave birth to a baby just at 17 years of her age, while she was a minor. The records of the case and the affidavit sworn by him in this application shows that the petitioner was a major of 22 years while taking away the minor victim girl and allegedly marrying her. The record also reveals that police on many occasions searched the residence of the petitioner but he was not found and that he evaded arrest in the case. For that reason, the police in the Charge Sheet No. 67/2023 dated 31.05.2023 filed in said RK Nagar PS Case No. 22/2023 show the petitioner, Kayadul Hussain as an absconder.

14) Finding sufficient incriminating materials against the petitioner in the records of the case regarding his involvement in the alleged crime, more so as the learned Special (POCSO) Judge, Karimganj on 02.09.2023 has already taken cognizance of the offence and has issued summons to him, in spite of which he did not appear, for which the learned Special Court, in the meantime, has issued Non-Bailable Warrant of Arrest (NBWA) against him for his production and appearance, this court is of the view that it is not a fit case to grant pre arrest bail to the petitioner, Md. Kayadul Hussain in said Special (POCSO) Case No. 36/2023, arising out of Ram Krishna Nagar Police Station Case No. 22/2023, presently pending before the Court of learned Special (POCSO) Judge, Karimganj-cum- Additional Sessions Judge, Karimganj.

15) Accordingly, this pre arrest bail application of the petitioner, **Md. Kayadul Hussain**, son of Asab Uddin in said Special (POCSO) Case No. 36/2023, arising out of Ram Krishna Nagar Police Station Case No. 22/2023 stands **rejected**.

16) Interim protection granted earlier to the petitioner in this proceeding on 31.05.2024 that —“*till receipt of record no coercive action shall be taken against the petitioner*” is hereby recalled / stands vacated.

17) Registry shall forth with communicate this order to the Court of learned Special (POCSO) Judge, Karimganj-cum- Additional Sessions Judge, Karimganj.

18) The State Legal Services Authority, Assam shall pay the remuneration to Ms. R. B. Bora, learned Legal Aid Counsel, who assisted the Court, on raising a bill by her.

JUDGE

Comparing Assistant