

GAHC010109062024



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

Case No. : AB/1420/2024

SHAJU MIAH
S/O ABU KALAM, VILLAGE JHOWDANGA, PS MANKACHAR, DIST SOUTH
SALAMARA MANKACHAR, ASSAM 783131

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. A Z AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.07.2024

Heard Mr. A. Z. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 438 of the Code of Criminal Procedure praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with South Salmara P.S. Case No. 84/2024, under Sections 365 of the Indian Penal Code.

Case Diary has been received. Perused the same. Heard both sides.

It is submitted by Mr. Ahmed, learned counsel for the petitioner the victim eloped with the accused/petitioner by her own and at the time of the alleged incident, she was more than 19 years of age and as per her birth certificate, her date of birth is 12.02.2005. More so, the case was registered under Section 365 of the Indian Penal Code and she has already been recovered and her statements under Section 161 as well as 164 Cr.P.C. are also recorded. The accused/petitioner is ready and willing to co-operate with the I.O. in the further investigation of this case if he is granted with the privilege of pre-arrest bail.

In this context, Mr. Sharma, learned Additional Public Prosecutor, has submitted that as per the birth certificate collected by the I.O., she was 16 years of age at the relevant time of incident. However, considering the materials available in the Case Diary, viz-a-viz her statement recorded under Section 164 Cr.P.C., custodial interrogation of the present accused/petitioner may not be necessary.

After hearing the submissions made by the learned counsels for both sides and also considering the materials available in the Case Diary as well as the other aspects of the case, I find that custodial interrogation may not be

necessary in the interest of investigation and accordingly, I find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioner.

Accordingly, it is provided that in the event of arrest of the accused/petitioner, namely, Shaju Miah, in connection with South Salmara P.S. Case No. 84/2024, under Sections 365 of the Indian Penal Code, he shall be enlarged on pre-arrest bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the arresting authority, subject to the following conditions:

- (i) that the petitioner shall appear before the Investigating Officer of the case within a period of 1 (one) week from today;
- (ii) that the petitioner shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the investigation of the aforesaid P.S. Case; and
- (iii) that the petitioner 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 him from disclosing such facts to the Court or to the Investigating Officer or tamper with the evidence of the case.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant