

GAHC010127422024



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

Case No. : AB/1659/2024

UMESH BASUMATARY
S/O RANU KUMAR BASUMATARY, R/O ASHRABARI, P.S.-SIDLI, DIST-
CHIRANG (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:DANSWRANG BASUMATARY
S/O LT. JIREN BASUMATARY
R/O AMGURI
DIST- KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. A AHMED, MR A AHMED, U U KHAN

Advocate for the Respondent : PP, ASSAM,
MR UJJAL CHOUDHURY, LEGAL AID COUNSEL (R2)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.08.2024

Heard Mr. A. Ahmed, learned counsel for the applicant; Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent; and Mr. U. Choudhury, learned Legal Aid Counsel for the respondent No. 2.

2. This application, under Section 438 of the Cr.P.C. is preferred by the applicant, namely, **Umesh Basumatary**, who has been apprehending arrest in connection with **Kokrajhar P.S. Case No. 315/2023**, under Sections 323/342/376/427/506 of the IPC, read with Section 6 of the POCSO Act, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Danswring Basumatary, on 10.09.2023. The essence of allegation made in the aforesaid FIR is that on 06.09.2023, at about 7:30 p.m., the daughter of the informant Smt. X (name withheld), aged 17 years, was called by Umesh Basumatary at Titaguri to his rented room on the pretext of some works and there he confined her for 3 nights and committed rape upon her and also assaulted her and caused injuries over her person.

4. Mr. Ahmed, learned counsel for the applicant submits that this is the second bail application filed by the applicant and the first one, being A.B. No. 20/2024 was dismissed by this Court, vide order dated 17.02.2024, after perusing the case diary. Mr. Ahmed further submits that during the course of the investigation, the I.O. has seized the victim's H.S.L.C. Admit Card and H.S.L.C. Registration Certificate, issued by the Board of Secondary Education, Assam, which shows that the date of birth of the victim girl is 17.04.2005 and the said documents are being annexed with the petition, as Annexure – 5 & 6, respectively, at page Nos. 23 & 24. Mr. Ahmed also submits that there was love relationship between the applicant and the victim and on account of some disputes, the FIR was lodged and subsequently, the same was resolved amicably. Mr. Ahmed also submits that the applicant got married with the victim girl, on 22.04.2024, under the Special Marriage Act, 1954 and the said marriage certificate is enclosed with the petition, as Annexure – 7, at page No. 27 and that the dispute between the accused and the victim is private in nature. Referring to a decision of Hon'ble Rajasthan High Court, in S.B. Criminal Misc (Pet.) No. 6323/2022,

Mr. Ahmed submits that the High Court of Rajasthan has quashed the proceeding by considering the fact that the victim is a consenting party to the physical relation with the petitioner and the same order was upheld by the Hon'ble Supreme Court, in Special Leave to Appeal (Crl.) No(s). 1890/2023, vide order dated 03.03.2023. Under the aforementioned facts and circumstances, Mr. Ahmed has contended to allow the petition.

5. Per-contra, producing the case diary before the Court and referring to the materials available in the Case Diary, especially the statement of the victim girl recorded under Section 164 of the Cr.P.C., Mr. Lahkar, learned Additional Public Prosecutor has vehemently opposed the petition and submits that solemnization of marriage, subsequent to the offence, would not absolve him from culpability of the offence. Mr. Lahkar further submits that even though assuming, but not accepting, the victim girl as a major, the case has been registered under Sections 323/ 342/ 376/ 427/ 506 of the IPC, also besides the Section 6 of the POCSO Act, the offences are serious in nature and therefore, it is contended to dismiss the petition.

6. Mr. Choudhury, learned Legal Aid Counsel for the respondent No. 2 also opposed the application and adopted the submission of Mr. Lahkar, learned Additional Public Prosecutor.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court with the assistance of Mr. Lahkar, learned Additional Public Prosecutor.

8. Admittedly, this is a second pre-arrest bail preferred by the applicant and the first one, being A.B. No. 20/2024, was dismissed by this Court, vide order dated 17.02.2024, after perusing the case diary. It appears that during the course of the investigation, the I.O. had seized the victim's H.S.L.C. Admit Card and H.S.L.C.

Registration Certificate, issued by the Board of Secondary Education, Assam, which shows that the date of birth of the victim girl is 17.04.2005. Mr. Ahmed, learned counsel for the applicant has rightly pointed out this during his argument. It also appears that the I.O. has seized another Birth Certificate of the victim girl, issued by the Registrar of Death and Birth, which shows that the date of birth of the victim girl is 17.04.2006. Mr. Ahmed further submits that in view of Section 94 of the Juvenile Justice, Care and Protection Act, 2015, the certificate issued by the Board of Secondary Education, Assam has to be taken into account, which indicates that the date of birth of the victim girl is 17.04.2005, and as such, the victim is above 18 years.

9. If we accept that the age of the victim girl is above 18 years and as such, the culpability of the offence, under Section 6 of the POCSO Act is not attracted here in this case. But, the materials, collected so far in the case diary, also indicates the complicity of the applicant with the offence under Sections 323/ 342/ 376/ 427/ 506 of the IPC of which the offence under Section 376 of the IPC is serious in nature.

10. It is also to be noted here that the applicant got married with the victim girl, on 22.04.2024, under the Special Marriage Act, 1954 and the said marriage certificate was issued by the Marriage Officer, Bijni. But, in view of the decision of a three Judges Bench of Hon'ble Supreme Court, in the case of **Gian Singh vs. State of Punjab & Another**, reported in **(2012) 10 SCC 303**, an offence of rape, murder, dacoity, etc. are not private in nature and they have serious impact on the society. That being so we are unable to agree with the submission of Mr. Ahmed, learned counsel for the applicant, in this regard.

11. It is also to be noted here that in view of the decision of Hon'ble Supreme Court in the case of **Aparna Bhat & Others vs. State of Madhya Pradesh & Another**, in **Criminal Appeal No. 329/2021**, arising out of Special Leave Petition (Crl.) No. 2531/2021 and also in the case of **State of M.P. vs. Madanlal**, reported in **(2015) 7 SCC 681**, in the case of a sexual offences, the concept of compromise,

especially in the form of marriage between the accused and the prosecutrix shall not be thought of, as any such attempt would be offensive to the woman's dignity. That being so, in this regard, the submission of Mr. Ahmed, cannot be accepted.

12. In view of above discussions, this Court is of the view that no relief can be granted to the applicant, as prayed for by the applicant.

13. In the result, this Court finds no merit in the petition and accordingly, the same stands dismissed.

14. The case diary be returned.

JUDGE

Comparing Assistant