

GAHC010128342024



2024:GAU-AS:12431

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

Case No. : AB/1652/2024

ABUL HUSSAIN
S/O LATE KAFUL UDDIN, R/O DAKSHIN SAFAKAMAR, P.O.-GUBARDHANA,
P.S.-BARPETA ROAD, DIST- BARPETA, ASSAM, PIN-781315

VERSUS

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

2:FAZAR ALI
S/O LATE ZAMIR UDDIN
R/O UTTAR SAFAKAMAR
P.O.-GUBARDANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR. M U MONDAL, R KHATUN,MR A ALIM SK,MS. N NASRIN

Advocate for the Respondent : PP, ASSAM, MS P DAS, Amicus Curiae(R-2)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

09.12.2024

Heard Ms. N Nasrin, learned counsel for the petitioner and Mr. K K Parashar, learned Additional Public Prosecutor, Assam for the State.

2) By this application filed under Section 438 of the Cr.P.C., the petitioner, namely, **Abul Hussain**, son of Late Kaful Uddin, resident of Dakshin Safakamar, P.S.-Barpeta Road, District-Barpeta, has prayed for his pre-arrest bail in **Barpeta Road Police Station Case No. 79/2024** registered under Section 8 of the POCSO Act, 2012.

3) As per the FIR dated 03.06.2024 lodged by the informant/respondent No.2 before the Officer-in-Charge of Barpeta Police Station, the case is that on 30.05.2024 at around 10:00 in the morning, in the absence of the complainant/informant, while his minor daughter was playing with two of her colleagues in a paddy field in the accumulated rain water, the petitioner pulled his minor daughter to the Broiler chicken farm, wherein, he grabbed her and also sexually assaulted her.

4) Accordingly, the said FIR of the complainant/informant was registered as Barpeta Road P.S. Case No. 79/2024 under Section 8 of the POCSO Act, 2012.

5) Perused the case diary placed before the Court today by Mr. K K Parashar, learned Additional Public Prosecutor, Assam. Also perused the statement of the minor victim girl recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate First Class, Barpeta on 05.06.2024 as well as the statement of the other acquainted witnesses recorded under Section 161 Cr.P.C, so far collected by the concerned Investigating Officer of the case.

6) From the case diary, it is seen that the minor victim girl was about 12 years of age at the time of the incident and that she in her statement recorded under Section 164 Cr.P.C as well as in their statements made before the I.O. of the case, she and her colleagues who were playing with the victim on the date of the incident on 30.05.2024 at the paddy field implicated the petitioner with regard to his involvement in the alleged crime.

7) From the perusal of the case diary, it is also seen that the concerned Investigating

Officer of the case has already seized the birth certificate of the minor victim girl, which reflects her date of birth as 22.05.2012, indicating that the minor victim girl was just 12 years of age on the date of the incident.

8) Case diary further reveals that inspite of issuance of order of Non-Bailable Warrant of Arrest against the petitioner on two earlier occasions; the petitioner did not appear before the learned Special Judge (POCSO) cum Additional Sessions Judge, Barpeta.

9) Since, the petitioner evaded police from his arrest during the course of investigation of the case, he was shown as an absconder accused in the charge-sheet filed in said **Barpeta Road P.S. Case No. 79/2024**.

10) Finding sufficient incriminating materials against the petitioner with regard to his involvement in the alleged crime, the Court is of the view that it is not a fit case to grant pre-arrest bail to the petitioner in said Barpeta Road P.S. Case No. 79/2024.

11) Accordingly, this pre-arrest bail application of the petitioner, **Abul Hussain**, in said Barpeta Road P.S. Case No. 79/2024 stands rejected.

12) Return the case diary herewith.

JUDGE

Comparing Assistant