

GAHC010130972024



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

Case No. : AB/1727/2024

JUNAIDUL ISLAM @ JUNAHD ALAM
S/O ABDUL FATTAR @ ABDUL SARTTAR, R/O VILL- JURIPAR, P.S.-
KACHUA, DIST-NAGAON, ASSAM, PIN- 782426

VERSUS

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

2:MONIGUNA KHATUN
W/O RAFIKUL ISLAM
R/O VILL- 2 NO. FAKALI
P.S.-KACHUA
DIST- NAGAON (ASSAM)
PIN-78242

Advocate for the Petitioner : MR. R C DAS, A JUBARIA,MR S HUSSAIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.10.2024

Heard Mr. R.C.Das, learned counsel for the petitioner. Also heard Mr. D.P.Goswami, learned Additional Public Prosecutor for the State respondent No.1

and Ms. R.Choudhury, learned Amicus Curiae for the respondent No.2.

This is an application filed under Section 438 of the Cr.P.C., praying for pre-arrest bail by the petitioner, namely, **Junaidul Islam @ Junahid Alam** apprehending arrest in connection with **Kachua P.S. Case No. 15/2024**, registered under Section 376 of the IPC, R/W Section 4 of POCSO Act.

The Case diary, as called for, is placed before the Court.

The allegation in the FIR reveals that on 19.02.2024, the informant and her husband went to Dimapur and on the same day, at about 11.30 pm, the petitioner entered into the house of the informant and committed rape on her daughter by showing dagger when she was sleeping.

Learned counsel for the petitioner submits that the alleged incident had occurred on 19.02.2024 but the FIR was lodged after one month of the occurrence i.e. on 22.03.2024. The allegation made in the FIR is totally false and concocted. It is further submitted that the petitioner is under treatment at North Eastern Indira Gandhi Regional Institute of Health & Medical Science, Shillong in the Cardiology department. In support of his submission, medical documents have been annexed with the bail application. As the petitioner is apprehending arrest, he may be enlarged on pre-arrest bail.

Learned Addl. Public Prosecutor has produced the case diary along with the statement of the victim recorded under Section 164 CrPC and submitted that the victim had implicated the petitioner. The medical report suggests that the victim had been sexually abused by the petitioner and as such, pre-arrest bail may not be granted to the petitioner at this stage.

Learned Amicus Curiae appearing for the respondent No. 2 has also opposed in granting pre-arrest bail to the petitioner as the petitioner had committed sexual

assault towards the minor victim girl.

I have considered the arguments advanced by the parties as well as perused the case diary and statement of the victim recorded under Section 164 CrPC.

On perusal of the statement of the victim recorded under Section 164 CrPC wherein the victim had stated that in absence of her parents in the house, the accused petitioner committed sexual intercourse with her. Medical report of the victim is also available in the record which shows that on examination, doctor found injury on her private parts with inflammation and swelling. One birth certificate collected by the I.O. is available in the case diary which shows that the date of birth of the victim is 21.07.2007 which transpires that she was aged around 16 years on the date of the alleged incident.

Considering the matter in its entirety, this Court is of the opinion that it is not a fit case to grant the privilege of pre-arrest bail to the petitioner.

Accordingly, the pre-arrest bail application stands rejected.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant