

GAHC010132442024



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

Case No. : AB/1709/2024

JULHAS ALI AND ANR
S/O LATE MAHAMMAD ALI, R/O BHALUKMARI, MOUZA-BETBARI, P.S.-
BARPETA, DIST-BARPETA, ASSAM

2: ABDUL RAHIM
S/O LATE SAMSUL HOQUE
R/O BHALUKMARI
MOUZA-BETBARI
P.S.-BARPETA
DIST-BARPETA
ASSA

VERSUS

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

2:JOYNAL ABEDIN
S/O LATE ABDUL RAHIM
R/O BHALUKMARI
MOUZA- BETBARI
P.S.-BARPETA
DIST- BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR S H SIKDAR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 28.06.2024

- 1.** Heard Mr. S. H. Sikdar, learned counsel for the petitioners. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State respondent.
- 2.** This application has been preferred under Section 438 of Code of Criminal Procedure, 1973, by the petitioners, namely, Julhas Ali , and (2) Abdul Rahim who are apprehending their arrest in connection with Barpeta P. S. Case No. 207/2024 registered under Sections 120(B)/376/313 of the Indian Penal Code read with Section 6 of the POCSO Act.
- 3.** The gist of the accusation in this case is that on 19.05.2024, the father of the victim girl had lodged an FIR naming three accused persons including the present petitioners, *inter-alia*, alleging that the accused No.1, Saddam Ali, had subjected his daughter to sexual intercourse on several occasions and since 10.12.2023, the said accused, namely, Saddam Hussain, has been absconded.
- 4.** It is also alleged that because of the act of the Saddam Saddam Ali, the daughter of the informant became pregnant.
- 5.** It is also stated in the FIR that thereafter, a village meeting was called for to discuss the matter, wherein the present petitioners also attended and it is alleged in the FIR that the present petitioners assured that a settlement would be reached by 18.05.2023.
- 6.** However, no such settlement could be reached, neither the present petitioners attended the meeting on 18.05.2023 and therefore, the FIR was lodged.

7. Learned counsel for the petitioners has submitted that bare perusal of the FIR would show that the allegations of sexual intercourse with the victim has been made only against the accused No.1 named in the FIR and no allegation under POCSO Act or under Section 376 is there against the present petitioners and they have been made accused in the FIR only because they did not attend the village meeting, which was held on 18.05.2023.

8. Learned Additional Public Prosecutor also submitted that the FIR itself shows that the allegations are against Saddam Ali, i.e. the accused No.1 only and not against the present petitioners.

9. In view of the submission made at bar and in view of fact that no allegation of sexual harassment or any offence under Section 376 of the Indian Penal Code has even been alleged against the present petitioners, their custodial detention may not be necessary in this case.

10. Hence, both the above named petitioners are directed to appear before the Investigating Officer of Barpeta P. S. Case No. 207/2024 within a period of 10 days and cooperate in the investigation. If they do so within this stipulated period of time, in the event of their arrest in connection with Barpeta P. S. Case No. 207/2024, they shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of the arresting authority subject to the following conditions:

- i.** That the petitioners shall co-operate in the investigation.
- ii.** That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.

11. With the above observation, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant