

GAHC010139772024



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

Case No. : AB/1802/2024

ROFIZUDDIN ALIAS RAFIZUDDIN
S/O- LATE ABDUL SATTAR,
R/O- VILLAGE- ISLAMPUR,
BECHAPATTY,
P.O- DHARMAPUR,
P.S- LALUK, DIST- LAKHIMPUR, ASSAM, PIN-784160,

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

2:MAJIDA KHATUN
W/O- SAIDUL ISLAM
VILLAGE- ISLAMPUR BECHAPATTY
P.O- DHARMAPUR
P.S- LALUK
DIST- LAKHIMPUR
ASSAM
PIN-78416

Advocate for the Petitioner : NIMISH MAHAJAN, MR. D BORA,MR. P K DAS,MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM, MR G J SAIKIA,MR S DAS

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

02.08.2024

Heard Mr. B. K. Mahajan, learned counsel for the petitioner. Also heard Mr. D. P. Goswami, learned Additional Public Prosecutor appearing for the state respondent No.1 and Mr. G. J. Saikia, learned counsel appearing for the respondent No.2.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Rofiz Uddin @ Rafijuddin**, in connection with **Laluk PS Case No. 103/2024** registered under **Section 376/306/511 IPC read with Section 6 of POCSO Act.**

Learned counsel for the petitioner has argued that the petitioner is working as Assistant Teacher in No.1 Pachnoi L.P. School, Lakhimpur and in the said capacity he has been discharging his duties with utmost sincerity and dedication without any complaint and he is having no any criminal antecedent. It is further submitted that the petitioner is no way connected with the allegations as contained in the FIR and as such the petitioner may be enlarged on pre-arrest bail.

According to learned counsel for the petitioner, the actual fact of the case is that the victim girl and her family members are neighbors of the petitioner having visiting terms between both the families since long. The petitioner being one of the neighbors, sometimes used to help the victim in her study and the victim also often used to call him over phone regarding study matter. Surprisingly, few days back from the date of incident, the victim proposed love with the petitioner but the petitioner being a married person having his wife and a minor daughter vehemently refused the same.

It is further submitted that the allegation of making physical relation with the victim by the petitioner in a hotel at Kimin, Arunachal Pradesh is totally false and fabricated as on that particular date the petitioner was very much present

in his school.

It is also contended by learned counsel for the petitioner that the petitioner is a married person having his wife and minor daughter and there is no any relationship with the victim girl except a well wisher being her neighbour and as such there is no question of entering into second marriage with the victim girl.

In view of the above, learned counsel for the petitioner prays to extend the benefit of pre arrest bail to the petitioner.

On the other hand, Mr. D. P. Goswami, learned Additional Public Prosecutor has produced the case diary and opposed in granting bail to the petitioner. It is submitted that the victim in her statement recorded under Section 164 Cr.P.C. has implicated that she has been sexually abused by the petitioner.

Mr. Saikia, the learned counsel for the respondent No.2 submits that the informant, being the mother of the victim, filed an affidavit stating that the petitioner is their neighbour and both the families are having visiting terms between each other since long. During the lifetime of the father of petitioner, an agreement was arrived between both the families that both sides will share the common path between their respective houses for entry and exit. However, after the death of the father of the petitioner, the petitioner's family refused to abide by the same which led to many altercations between both families resulting in several misunderstanding between both sides.

According to learned counsel for the respondent No.2, the entire incident arose from a complete misunderstanding between the parties and the informant

has no objection if pre-arrest bail is granted to the petitioner.

Having heard the learned counsel for the parties and on perusal of the case diary, I have come to the conclusion that though the mother of the victim initially lodged the FIR but subsequently, she was won over by the petitioner's side. This is really unfortunate. The victim who is around 15 to 16 years of age is the prey of sexual lust of the petitioner. In her statement under Section 164 Cr.P.C, the victim clearly stated that the petitioner used to take her tuition class for last one year and proposed her to make love relationship with the petitioner. Though initially she refused but subsequently, on his frequent request and pressure, she told the petitioner that she loved him and there after she was taken to Kimin and they stayed in a hotel wherein the petitioner had sexual intercourse with her. Subsequently, at Lakhimpur also the petitioner committed such type of nuisance towards her. Coming to know about the incident she has been rebuked by her mother. The victim further stated that subsequently, when she made a phone call to the petitioner, he told her that he did not love her and for which she tried to commit suicide.

The medical report of the victim is also available in the case diary which reveals that the victim also disclosed before the medical officer that she was taken to Kimin and the petitioner sexually abused her forcefully at hotel in Kimin. The medical officer also found the hymen of the victim ruptured.

Hon'ble Supreme Court in Crl. A. No. 263/2022 (arising out of SLP (Crl.) No. 9317/2021) has observed as follows:

“The High Court was manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that “there was a love affair” between

the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that "there was a love affair" between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO."

Situated thus, as it appears that there is sufficient incriminating material against the petitioner in the case diary as well as considering the above legal proposition, this Court is not inclined to grant pre-arrest bail to the petitioner. Therefore, the bail application stands rejected.

Accordingly, the anticipatory bail application stands disposed of.

Return the case diary.

JUDGE

Comparing Assistant