

GAHC010145852024



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

Case No. : AB/1908/2024

NAZAR ALI AND ANR
S/O LATE NURODDIN
R/O VILL- CHIKNIBARI
P.S. TAMULPUR
DIST. BAKSA, BTAD

2: SADDAM HUSSAIN
S/O LATE ABDUL RAFIK
VILL- TATARKUCHI
P.S. RANGIA
DIST. KAMRUP (R)
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP, ASSAM

2:SMTI. MAINA BEGUM
W/O MAYEN ALI
R/O VILL- HAHKATA
P.S. TAMULPUR

PIN-781367
DIST. BAKSA
ASSA

Advocate for the Petitioner : MS F BEGUM, MS P DASGUPTA,MR S PAUL

Advocate for the Respondent : PP, ASSAM, MS. T SOM(R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 13.09.2024

Heard Mr. S.Paul, learned counsel for the petitioners as well as Mr. B.B.Gogoi, learned Addl. P.P., Assam for the State respondent No.1. Also heard Ms. T.Som, learned counsel for the respondent No.2.

This application under section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the petitioners, namely **1. Nazar Ali** and **2. Saddam Hussain** praying for pre-arrest bail apprehending arrest in connection with **Tamulpur P.S. Case No. 108/ 2024** under Section 376-D of IPC r/w Section 6 of POCSO Act.

The background of the case is that an FIR has been lodged by the informant before the Officer-in-charge of Tamulpur PS stating *inter alia* that her minor daughter is a student of Ashraful Ullum Khadijatun Bannat Madrassa at Tetorkuchi, Rangia. On 14.05.2024, the President of Madrassa informed her that her daughter was vomiting and became unconscious and asked to take her daughter from Madrassa. Thereafter, the informant took her daughter to the house of petitioner No.1 being an Ayurvedic doctor for treatment of her daughter. Subsequently, Nazar Ali (Petitioner No.1) called two employees of Madrassa over phone namely, Saddam (Petitioner No.2) and Khalek and asked her to sit outside as they would do some Ayurvedic treatment to her daughter. After one hour, when she entered into the room, she found her daughter in an unconscious state. On being asked, Petitioner No.1 asked the informant to take her daughter back home and she would be recovered. After half an hour, when

the victim regained her sense, she informed her mother that she was administered medicine and water by the petitioners and thereafter, all the three committed rape on her. After taking the medicine, she was not in a position to protest against such acts. Accordingly, a case was registered vide Tamulpur PS Case No.108/2024.

Learned counsel for the petitioners submits that petitioner No.1 is an Ayurvedic medicine seller, having his wife, sons and daughter-in-laws. The petitioner No. 2 is an employee of Ashraful Ullum Khadijatun Bannat Madrassa wherein the victim is a student. It is also submitted that one of the accused Khalek Ali was arrested in connection with the case and as such, they are apprehending arrest.

It is further submitted that the allegation made in the FIR is totally false and concocted on the basis of the statement of the victim who is suffering from severe illness. The informant lodged the FIR after eleven days of the incident which creates a doubt regarding the alleged incident.

According to learned counsel for the petitioner, there are so many people in the house of the petitioner No.1. The mother and elder sister of the victim were also present there and as such, it was not possible on the part of the petitioners to do any such illegal activities in presence of so many people.

In view of the above, the learned counsel for the petitioners submits that the benefit of pre-arrest bail be extended to the petitioners.

In response, the learned Addl.P.P. has produced the case diary and submits that the victim is a minor girl. The petitioners along with the arrested co-accused committed rape on the victim. The arrested accused in his statement before the I.O. admitted that he along with both the petitioners herein committed rape on the victim. Considering the gravity of the offence, learned Addl.P.P. has prayed

for dismissal of the prayer for bail.

The learned counsel for the respondent No. 2 has also opposed in granting pre-arrest bail to the petitioners by stating that it is a case of gangrape committed towards a minor girl which is a serious offence, so custodial interrogation of the petitioners are required.

I have considered the submission of the learned counsel for the parties and perused the case diary including the statement of the victim recorded under Section 164 CrPC (Section 183 BNSS).

On perusal of the case diary, it reveals that the victim was sexually abused by the petitioners along with arrested co-accused. The medical report of the victim also supports the fact that hymen of victim was found absent by the medical officer. The I.O has collected the birth certificate of the victim showing her date of birth as 15.02.2008. It transpires that the victim was around 16 years of age at the time of the alleged incident.

In view of the above, this Court is of the opinion that it is not a fit case to grant the privilege of pre-arrest bail to the petitioners.

Accordingly, the pre-arrest bail application stands rejected.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant