

GAHC010161832024



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

Case No. : AB/2131/2024

MOKHLES ALI
S/O ABDUL AZIZ
R/O VILL- MESHKARJHAR PART-I,
PANCHGAN, P.S. ABHAYAPURI
P.O. DHANTOLA
DIST. BONGAIGAON, ASSAM
PIN-783372

VERSUS

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

2:MUSSTT INISA BIBI
W/O LATE SURUT JAMAL SK.
R/O VILL- BANGALDOBA PT.II
P.O. DHANTOLA
DIST. BONGAIGAON
ASSAM
PIN-78337

Advocate for the Petitioner : MR B M DEKA, MR R.AHMED,MS. S SARMAH

Advocate for the Respondent : PP, ASSAM, M K BROWN, Amicus Curiae(R-2)

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

ORDER

28.10.2024

Heard Mr. B M Deka, learned counsel for the petitioner and Mr. K Baishya learned Additional Public Prosecutor, Assam for the State/opposite party No.1. Also heard Ms. M K Brown, learned Amicus Curiae, for the opposite party No.2.

2) By this application filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Mokhles Ali**, Son of Abdul Aziz, resident of village Meshkarjhar Part-I Panchagaon, Police Station - Abhayapuri, District - Bongaigaon, apprehending his arrest is seeking for his pre-arrest bail in Kokrajhar Police Station Case No. 368/2022 registered under Sections 363/376(3)/324 of the IPC read with Section 6 of the POCSO Act, 2012, corresponding to GR No. 629/2022.

3) As per the FIR of the case lodged on 05.08.2022 by the informant/opposite party No.2 the case is that on the morning of 27.07.2022, the accused petitioner took away her minor daughter by inducing her to an unknown place and raped her. Then the said accused petitioner took her minor daughter to his house, wherein, the other FIR named accused persons, i.e., sister-in-law, father, mother and other family members of the petitioner physically assaulted her due to which her minor daughter sustained injuries.

4) In her FIR dated 05.08.2022, the informant stated that as the minor victim was injured for sometime, there was some delay in lodging the FIR of the case.

5) Mr. Deka, learned counsel for the petitioner, submitted that the informant falsely implicated him in the case even though he is no way connected with it.

6) It is also submitted by Mr. Deka on behalf of the petitioner that though he has been implicated under Section 6 of the POCSO Act, 2012, but the victim refused for her medical

examination. It is further stated that the alleged incident occurred in July 2022 and by this time, the investigation is probably over and as such, custodial detention of the petitioner, named above, is not warranted for investigation of said Kokrajhar P.S. Case No. 368/2022.

7) Perused the case diary placed before the Court by Mr. Baishya, learned Additional Public Prosecutor, Assam. Also heard the objections made by Mr. Baishya, learned Additional Public Prosecutor, Assam as well as Ms. Brown, learned Amicus Curiae, appearing on behalf of the opposite party No.2.

8) From the case diary, it is seen that the victim in her statement made before police under Section 161 Cr.P.C as well as her statement under Section 164 Cr.P.C made before the learned Judicial Magistrate First Class, Kokrajhar on 08.08.2024, admitted the fact that she had love affair with the petitioner but it is the petitioner who on the date of the incident, called her over phone asking her to come out of the house and it is the petitioner who took her away from her home and forcefully had sexual intercourse with her inspite of her objection and left her alone in the house of the petitioner, wherein the family members of the petitioner misbehaved with her and also physically assaulted her.

9) It is also seen that police seized the Registration Card of the minor victim girl pertaining to her appearance in the HSLC Class-X Examination 2020, wherein the date of birth of the petitioner is indicated as 22.04.2005 and as such on the date of the incident, i.e. on 27.07.2022, the victim was a minor. Considering his age as sworn in his affidavit, filed in this application, it is seen that the petitioner was a major of 21 years at the time of the incident.

10) Considering such materials in the case diary, though the minor victim girl refused to undergo medical test, the Court is of the view that it is not a fit case to grant pre-arrest bail to the petitioner, namely, **Mokhles Ali**, in said Kokrajhar Police Station Case No. 368/2022.

11) Accordingly, this pre-arrest bail application of the petitioner, named above, in the said Kokrajhar Police Station Case No. 368/2022 stands rejected.

12) Return the case diary herewith.

13) The Gauhati High Court Legal Services Committee shall pay the remuneration to Ms. Manisha Karen Brown, learned Amicus Curiae who appeared for the informant/opposite party No.2 as per direction of the Court and also assisted the Court in adjudicating this matter, on

raising a bill by her.

JUDGE

Comparing Assistant