

GAHC010173902024



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

Case No. : AB/2256/2024

SAMIDUL ISLAM AND ANR
S/O JAHARUL ISLAM
R/O VILL- DEOHATI DAKHINPARA
P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM

2: JAHARUL ISLAM
S/O LATE MOZID ALI
R/O VILL- DEOHATI DAKHINPARA P.S. ABHAYAPURI DIST. BONGAIGAON
ASSA

VERSUS

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

2:MURCHIDA BEGUM
W/O KHAWERUDDIN SHEIKH
VILL- KAYETPARA PT.II
P.S. ABHAYAPURI
DIST.BONGAIGAON
ASSA

Advocate for the Petitioner : MR. P RAHMAN, MR S ISLAM

Advocate for the Respondent : PP, ASSAM, P ADHIKARI (R-2)

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

ORDER

21.10.2024

Heard Mr. P Rahman, learned counsel appearing for the petitioners as well as Mrs. Swapna Bora Hazarika, learned Additional Public Prosecutor, Assam for the State Opposite Party No.1. Also heard Mr. P Adhikary, learned counsel for the informant/opposite party No.2 who has entered appearance by filing a Vakalatnama vide No. 6715/2024.

2) By this application filed under section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 the petitioners namely (i) Samidul Islam S/o Jaharul Islam, and (ii) Jaharul Islam S/o Late Mozid Ali, both residents of village Deohati Dakhinpara, P.S. Abhayapuri, District Bongaigaon, are seeking pre-arrest bail in Abhayapuri Police Station Case No. 195/2024 registered under sections 140(3)/64(1) read with Section 6 of the POCSO Act corresponding to NGR No. 368/2024.

3) As per the FIR dated 13.08.2024 lodged by the informant/opposite party No.2 before the North Salmara Police Outpost, her daughter who is 17 years of age and studying at Chapar Higher Secondary School was having an affair with the petitioner No.1 for the last six months and the petitioner No.1 promising her to marry had sexual intercourse with her minor daughter for more than 7-8 occasions against the will of the said minor. That on 11.04.2024 the accused petitioner No.1 forcefully intercoursed with the said minor against her will and threatened her of dire consequences directing her not to reveal the said fact to others.

4) On 10.08.2024, when her minor daughter went to Boithamari to make photostat of some documents, the accused petitioner No.1 came by a scooty and took her to North Salmara in that scooty inspite of her protest and tried to have forceful sexual intercourse with her against her will by removing her clothes. At that stage, when her minor daughter made hue and cry, the said accused petitioner No.1 assaulted her and broke her mobile phone.

5) Because of all those, when she was crying, 4 to 5 unknown boys from North Salmara came near her daughter and enquired about the matter and then they took her to the house of the accused petitioner where two of the women from their house kept her in their house. Later on in the afternoon around 3 P.M., the brother-in-law of the accused petitioner No.1 along with another person, brought her in an E-rickshaw and dropped her at Salbari. Therefrom, her daughter came back to her house and informed about the incident and when the informant with her son went to the North Salmara Outpost, the accused petitioner No.2 appeared there and tried to compromise the case.

6) However, after discussion on two occasions, the accused persons refused to compromise the matter and as such informed and stated that there was a delay in filing the FIR of the case. On the basis of the said written FIR lodged by the informant/opposite party No.2 on 13.08.2024 at North Salmara Outpost which was registered vide G.D. Entry No. 267 dated 13.08.2024, and subsequently registered as Abhayapuri Police Station Case No. 195/2024 under Sections 140(3)/64(1) of the BNS Act, 2023 read with Section 6 of POCSO Act.

7) It is stated that the petitioner No.1 is in his 3rd Semester of B.A. 2nd Year at Abhayapuri College, whereas the petitioner No.2 is the sole bread earner of his family.

8) It is also stated that both the families of the informant/opposite party No.2 and the accused petitioners are well aware of the relation between the victim and the petitioner No.1 and since the victim is a minor girl and not yet of 18 years of age, the petitioner No.1 requested the informant and her daughter to wait atleast for sometime so that he can complete his studies and by that time she will also becomes a major, which the informant did not consider and lodged the FIR of the case.

9) It is also submitted by the petitioners that only to harass them, the informant/the opposite party No.2 has lodged the FIR of the said Abhayapuri Police Station Case No. 195/2024.

10) Perused the Case Diary placed before the court by Mrs. Swapna Bora Hazarika, learned Additional Public Prosecutor, Assam.

11) Perused the statement of the victim recorded by the Investigating Officer of the case under Section 181 of the BNSS, 2023 as well as the statement of the victim recorded on 14.08.2024 under Section 183 of the BNSS, 2023 by the learned Judicial Magistrate First Class, North Salmara. Also perused the medical report of the victim dated 14.08.2024 issued by the Medical and Health Officer of Bongaigaon Civil Hospital.

12) As per the medical report and the X-Ray report, the victim is of 19-21 years of age. Though the victim in her statement stated that she is 17 years old but she did not state her date of birth. Police seized one Birth Certificate of the victim on 14.08.2024, but it is seen that the said Birth Certificate was issued in the name of the victim on 03.05.2023 showing her Date of Birth as 14.11.2024, that was seized in presence of independent witnesses.

13) Considering the Case Diary and the statement of the witnesses so far recorded by the concerned Investigating Officer of the case, the petitioner No.2 namely **Jaharul Islam** is granted pre-arrest bail in the said Abhayapuri Police Station Case No. 195/2024, on furnishing a bail bond of Rs. 30,000/- with 2(two) local sureties each of the like amount to the satisfaction of the arresting authority, subject to the conditions that said petitioner No. 2 shall-

i) appear before the concerned Investigating Officer of said Abhayapuri Police Station Case No. 195/2024 **on or before 25.10.2024** and thereafter, as and when he is required for necessary investigation of the case;

ii) not leave the territorial jurisdiction of said Abhayapuri Police Station, without obtaining prior written permission from the concerned Investigating Officer of the case;

iii) not hamper with the investigation, or tamper with the evidence of the case and;

iv) not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case including the victim and any other member of her family, so as to dissuade them from disclosing such facts to the Court

or to any police officer.

14) Any violation of the aforesaid terms and conditions by the petitioner No.2, named above, the bail granted to him in the abovenoted Abhayapuri P.S case shall stand automatically vacated.

15) However, considering the statement of the victim recorded under section 183 of BNSS 2023, her medical report and other statements of the persons acquainted with the facts so far recorded by the concerned Investigating Officer of the case, the Court found that it is not a fit case to grant pre-arrest bail to the petitioner No.1, namely, Samidul Islam, in said Abhayapuri Police Station Case No. 195/2024.

16) Accordingly, pre-arrest bail of the petitioner No.1, namely, Samidul Islam, in the said Abhayapuri Police Station Case No. 195/2024 stands rejected.

17) Return the Case Diary.

JUDGE

Comparing Assistant