

GAHC010177222024



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

Case No. : AB/2313/2024

MOMINUL ISLAM
S/O ROFIKUL ISLAM, VILL- RAKHALDUBI, P.O.-BALARBHITA, P.S.-
BAGAUAN, DIST- GOALPARA, ASSAM, PIN-783129

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

2:SHAJAHAN ALI
S/O DULLU SHEIKH
VILL- ABRARBHITA
P.O.-BALARBHITA
P.S.-BAGUAN
DIST- GOALPARA
ASSAM
PIN-78312

Advocate for the Petitioner : MR H R A CHOUDHURY, K ZAMAN,MR. A F N U MOLLAH

Advocate for the Respondent : PP, ASSAM, MR A H AHMED(R-2),MR. M R KHANDAKAR(R-2)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 08.10.2024

Heard Mr. H. R. A. Choudhury, learned senior counsel assisted by Mr. A. F. N. U. Mollah, learned counsel for the petitioner. Also heard Mr. R. J. Baruah,

learned APP for the State, who has produced the case diary and Mr. A. H. Ahmed, learned counsel for the complainant/informant, respondent No.2.

2. The petitioner who is apprehending arrest in connection with Baguan P.S Case No. 26/2024 under Section 366(A)/376/302 IPC read with Section 4 of POCSO Act, corresponding to G.R. No. 378/2024 has prayed for pre-arrest bail under Section 482 BNSS.

3. As per allegations made in the FIR, the victim aged 15 years is stated to have been missing since about 3:30 AM, when the informant (respondent No.2) woke up in the morning and at that time, he found his minor daughter's dead body in a half naked condition with many injuries. Thereafter, police arrived at the place of occurrence and found the mobile number of the petitioner written on the bed of her daughter. Accordingly, the police traced out the petitioner. As per the FIR, the petitioner had forcefully taken away the daughter of the informant from bed at the night of 04.04.2024 and taken her to an abandoned house of a person where she was raped and killed.

4. The learned counsel for the respondent No.2 has submitted that affidavit-in-opposition has been filed on 05.10.2024 which is not on record. However, Court has perused the copy of the said affidavit-in-opposition as produced by the learned senior counsel for the petitioner. The same has been perused and returned.

5. The learned APP as well as learned counsel for the respondent No.2 has opposed the prayer for bail.

6. On a perusal of the case diary, the evidence of sexual assault of the victim is not noticed. The FSL report does not disclose administration of any poison. However, the victim girl has some injury marks on her legs and cheek. However,

the age of such injuries has not been determined. Although the I/O has called the detail records of the mobile number of the petitioner, but the call records of the phone through which the petitioner may have contacted the victim is not available in the case diary.

7. Therefore, notwithstanding the objections made by the learned APP as well as the learned counsel for the respondent No.2, the Court is of the opinion that custodial interrogation of the petitioner may not be necessary, having regard to the nature of opinion given in the post mortem report as regards the cause of death.

8. Accordingly, Court is inclined to grant pre-arrest bail to the petitioner, namely, Mominul Islam by providing that in the event of arrest in connection with Baguan P.S. Case No.26/2024 under Section 366(A)/376/302 IPC read with Section 4 of the POCSO Act, corresponding to GR No.378 of 2024 shall be released on furnishing bail bond of Rs.50,000/- with two surety of like amount to the satisfaction of the arresting officer.

9. Out of two sureties, one surety shall offer his/her immovable property as security for grant of bail.

10. The Pre-arrest bail is grant on the following conditions:

1. The petitioner shall appear before the I/O within 7(seven) days from the date of the order and shall appear before the I/O as and when required and at least once a month till his personal appearance is dismissed or charge-sheet is submitted whichever is earlier.
2. In the event if the petitioner is found to be threatening the informant or any of the witnesses, and in default, it would be open to the I/O to pray for cancellation of bail.

3. That the petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.
 4. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
 5. That the petitioner shall not obstruct the smooth progress of the investigation/trial.
 6. That the petitioner shall not misuse his liberty in any manner.
 7. That the petitioner shall not jump over the bail.
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11. Registry shall tag the affidavit-in-opposition filed the respondent No.2 with the record.
 12. The case diary is returned.
 13. The application is disposed of.

JUDGE

Comparing Assistant