

GAHC010179222023



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

Case No. : AB/2890/2023

SAHJAHAN ALI
S/O LT. HAJARAT ALI
R/O VILL-DHING GATE
P.O. DHING,
P.S. NAGAON SADAR
DIST. NAGAON, ASSAM
PIN-782123

VERSUS

THE STATE OF ASSAM
REP. BY THE LEARNED PP, GOVT. OF ASSAM

2:SAJIDA BEGUM
W/O SAHJAHAN ALI
R/O DHING GATE
P.S.-SADAR
P.O.- DHING
DISTRICT-NAGAON
ASSAMPIN-78212

Advocate for the Petitioner : S AHMED
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

04.01.2024

Heard Mr. M. Rahman, learned counsel appearing for the petitioner. Also

heard Mr. R. R. Kaushik, learned Addl. Public Prosecutor, Assam appearing for the State respondent No. 1 and Ms. A. Hussain, learned counsel appearing on behalf of respondent No.2/informant.

By this second petition filed under Section 438 Cr.P.C., for granting the privilege of pre-arrest bail to the petitioner, namely, **Sahjahan Ali** apprehending his arrest in connection with **Nagaon P.S. Case No. 1317/2022** registered u/s **10 of Prohibition of Child Marriage Act, 2006**.

It may be mentioned that by order dated 27.06.2023, the bail prayer of the petitioner was rejected in AB No. 1803/2023.

The Case diary, as called for, is placed before the Court.

Learned counsel for the petitioner has submitted that earlier on perusal of the case diary, bail prayer of the petitioner was rejected by wrongly showing that the case was registered under section 10 of the POCSO Act in place of Section 10 of Prohibition of Child Marriage Act, 2006. It is also submitted that there is no allegation in the FIR that the petitioner has committed any offence which falls under POCSO Act or Child Marriage Act. In view of the fact, the benefit of pre-arrest bail may be granted to the petitioner.

Ms. A. Hussain, learned counsel appearing for the respondent No.2/informant submits that she has been wrongly informed that her husband is planning to get married with one minor girl as a result of which the informant lodged the FIR. In fact, the petitioner was no way connected with the present case and she has no objection if the pre-arrest bail be granted to the petitioner.

On the other hand, Mr. R. R. Kaushik, learned Addl. Public Prosecutor, Assam has produced the case diary and submits that the case was not registered under Section 10 of POCSO Act and there was no prayer of the IO to add Section 10 of

POCSO Act.

I have perused the case diary including the statement of the victim which reveals that the Magistrate has recorded the statement of one Sehnaz Begum under Section 164 Cr.P.C. As per FIR, one Moina is the victim girl and it was alleged in the FIR that the minor girl namely Moina had fled away with the petitioner. It is not reflected in the case diary whether Sehnaz Begum and Moina is one and same person.

Accordingly, it is provided that in the event of arrest, the petitioner, named above, shall be released on pre-arrest bail, in connection with the above noted case on furnishing bail bond of **Rs. 20,000/-** with one local surety of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:

- (i) That the petitioner shall appear before the Investigating Officer within 10 days from today; failing which on and from the 11th day, the pre-arrest bail order shall automatically come to end
- (ii) 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 the Police Officer or the Court.

Return the case diary.

This disposes off the anticipatory bail application.

JUDGE

Comparing Assistant