

GAHC010186442023



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

**Case No. : AB/2944/2023**

RAFIKUL SK @ RAFIKUL ISLAM  
S/O LT. NATUL SHEIKH,  
VILL.- BANGALDOBA PART- II, P.O.- NAYEKGAON, P.S.- KOKRAJHAR,  
DIST.- KOKRAJHAR, BTR, ASSAM, PIN- 783370.

VERSUS

THE STATE OF ASSAM AND 2 ORS.  
REP. BY THE P.P., ASSAM.

2:TAHAJ ALI  
S/O LT. ALABAKSA SHEIKH

VILL.- BANGALDOBA PART- II  
P.O.- NAYEKGAON  
P.S.- KOKRAJHAR  
DIST.- KOKRAJHAR  
BTR  
ASSAM  
PIN- 783370.

3:XXX  
D/O TAHAJ ALI

VILL.- BANGALDOBA PART- II  
P.O.- NAYEKGAON  
P.S.- KOKRAJHAR  
DIST.- KOKRAJHAR  
BTR  
ASSAM  
PIN- 783370

**Advocate for the Petitioner : MR. M HUSSAIN**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**  
**ORDER**

**12.02.2024**

Heard Mr M Hussain, learned counsel for the petitioner, Rafikul Sk @ Rafikul Islam.

2. The petitioner has filed this application under Section 438 CrPC, with prayer for pre-arrest bail, as he is apprehending arrest in connection with Kokrajhar PS Case No. 329/2021, under Section 376 DA IPC, read with Section 4 of the POCSO Act.

3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam and Mr A Alim Sk, learned counsel for the respondent Nos. 2 and 3.

4. The respondent Nos. 2 and 3 are the informant and victim respectively.

5. The respondent No. 2 lodged an FIR with the Police at Kokrajhar Police Station with allegations against the present petitioner that he forcefully committed sexual assault upon the victim, who was 13 years of age.

6. An additional affidavit is filed by respondent Nos. 2 and 3 that his case was initiated against the petitioner on misunderstanding. The respondent No. 3 is not a minor, but she is 21 years old.

7. It is submitted on behalf of the petitioner that Section 376 DA IPC is not applicable

as this is not a case of gangrape.

8. An affidavit sworn in by the respondent No. 2 is marked as Annexure-A of the petition, which clearly reveals that there was a love affair between the petitioner and the respondent No. 3. On a misunderstanding and a bonafide mistake, the respondent No. 2 has lodged this FIR against the petitioner.

9. I have considered the submissions at the Bar with circumspection.

10. I have perused the Case Diary.

11. Investigation has progressed to a considerable extent.

12. The petitioner is a local resident and he has pledged to cooperate with the investigation.

13. It is also submitted that the petitioner being a local resident is not a flight risk.

14. Considering all aspects and in view of my foregoing discussions, petition is allowed. In the event of his arrest, the petitioner shall be enlarged on bail of Rs. 50,000/- with a suitable surety of the like amount to the satisfaction of the arresting authority under the conditions that:-

- i) the petitioner shall appear before the IO within 10 (ten) days and cooperate with the investigation.

15. Bail Application stands disposed of.

16. Send back the Case Diary.

**JUDGE**

**Comparing Assistant**