

GAHC010200432024



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

Case No. : Bail Appln./2890/2024

JAHAR ALI AND ANR
S/O ABDUL RAHMAN
VILL- LATIBARI PART-II
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM

2: MOSTAFIJUR RAHMAN @ MUSTAFIJUR RAHMAN
S/O TAYAB ALI
VILL- LATIBARI PART-II
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
VERSUS

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

2: JAYANTI RAY
W/O LATE DIPAK RAY
VILL- SINGIMARI PART-II
P.O. ABHAYAPURI
PS. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN- 783384

Advocate for : MR. N UDDIN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29-10-2024

Heard Mr. N. Uddin, learned counsel for the petitioners and Mr. K. K. Das, learned Additional Public Prosecutor, Assam for the State. Also heard Ms. P. Das, learned Amicus Curiae for the informant/respondent No.2.

2) The petitioners, namely, **(1) Jahar Ali**, son of Abdul Rahman and **(2) Mostafijur Rahman @ Mustafijur Rahman**, son of Tayab Ali, both are resident of village Latibari Part-II under Abhayapuri Police Station of District Bongaigaon by this application filed under Section 483 of the BNSS, 2023 are seeking bail in **Abhayapuri P.S. Case No. 209/2024** registered under Sections 75/140(3)/62 of the BNS, 2023 read with Section 8 of the POCSO Act, 2012, corresponding to MGR No. 391/2024, in which they were arrested on 02.09.2024 and are in custody since then.

3) As per the FIR dated 02.09.2024 lodged by the informant/complainant/respondent No.2 before the Officer-in-Charge of Abhayapuri Police Station the case is that, since last 15 days her minor daughter was constantly disturbed by one person named Alam, who belongs to Islam religion and being a married man, tried to induce her said minor daughter putting her in a web of love affair. When her minor daughter goes to school, the said accused, who work as a Mistry in her school, used to give her indecent indications and thereby, used to disturb her. On the previous night around 07:00 pm when her minor daughter went to the shop to buy some food articles for the home, the said accused Alam with two of his friends forcefully tried to kidnap her minor daughter during which her minor daughter who save herself made hue and cry, pursuant to which local people arrived at the place of occurrence and apprehended the three accused persons red handed and also manhandled them and thereafter, handed those accused persons to police.

Accordingly, Abhayapuri P.S. Case No. 209/2024 under Sections 75/140(3)/62 of the BNS, 2023 read with Section 8 of the POCSO Act, 2012 was registered.

4) By order dated 23.09.2024, the Court called for the case diary of said Abhayapuri P.S. Case.

5) From the case diary placed before the Court today by the learned Addl. PP, Assam, it is seen that on an application of the Investigating Officer of said Abhayapuri P.S. Case and pursuant to order dated 17.09.2024 passed by the learned Special Judge, North Salmara, Abhayapuri therein, Section 4 of the POCSO Act, has been added in said Abhayapuri P.S. Case No. 209/2024 with Sections 75/140(3)/62 of the BNS, 2023 read with Section 8 of the POCSO Act, 2012.

6) From the perusal of the records it is seen that date of birth of the minor victim was 22.02.2009 as per her Birth Certificate issued on 17.03.2009 by the Registrar of Births and Deaths, Abhayapuri, Community Health Centre vide Registration No. 199/2009 seized by the Investigating Officer of the case. As such, at the time of occurrence of the alleged incident on 01.09.2023 relating to the present petitioners the victim was more than 14 years 5 months.

7) Perused the statement of the minor victim dated 02.09.2024 recorded by the Judicial Magistrate, First Class, North Salmara at Abhayapuri under Section 183 of the BNSS, 2023 as well as her statement dated 03.09.2024 recorded by the Chairperson of the Child Welfare Committee, Bongaigaon. Also perused, the statement of the minor victim recorded by the concerned Investigating Officer of the case under Section 180 of the BNSS, 2023.

8) Considering the statements of the minor victim, the witnesses acquainted with the case so far recorded by the concerned Investigating Officer of the case, the materials in the case diary and their detention in custody since 02.09.2024, this Court is of the opinion that further custodial detention of the petitioners named above, are not warranted for investigation of said Abhayapuri P.S. Case No. 209/2024. As such,

prayer of the petitioners for their bail in said Abhayapuri P.S. Case No. 209/2024 is accepted.

9) Accordingly, the petitioners, namely, **(1) Jahar Ali** and **(2) Mostafijur Rahman @ Mustafijur Rahman**, shall be released on bail in said **Abhayapuri P.S. Case No. 209/2024** on furnishing a bail bond of Rs. 50,000/- each with two local sureties each of the like amount, one of which shall be a Government Employee, either State or Central Government, to the satisfaction of the learned Special Judge, North Salmara, Abhayapuri, District - Bongaigaon on conditions that the petitioners — **(i)** shall appear before the Investigating Officer of said **Abhayapuri P.S. Case No. 209/2024** as and when they are required for investigation of said case; **(ii)** shall not leave the territorial jurisdiction of the Abhayapuri Police Station, without obtaining prior written permission from the concerned Investigating Officer of the case; **(iii)** shall not hamper with the investigation, or tamper with the evidence of the case; **(iv)** shall not, directly or indirectly, make any inducement, threat or promise to the minor victim, the informant, any one from their family or any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer and **(v)** shall not involve themselves in any criminal activities.

10) Any violation of the aforesaid terms and conditions by the petitioners, named above, the bail granted to them in the aforementioned **Abhayapuri P.S. Case No. 209/2024** shall stand automatically vacated.

11) This bail application is accordingly allowed and disposed of with the above observations and directions.

12) Return the case diary herewith.

JUDGE

Comparing Assistant