

GAHC010218422023



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

Case No. : AB/3339/2023

AFSER ALI AND ANR
S/ JALAL ALI
R/O VILL- KONDHULIMARI
P.S. CHAYGAON
DIST. KAMRUP, ASSAM

2: ASMINA KHATUN
W/O AFSER ALI
R/O VILL- KONDHULIMARI
P.S. CHAYGAON
DIST. KAMRUP
ASSA

VERSUS

STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 19-01-2024

Heard Ms. P Das learned counsel for the petitioner. Also

heard Mr. P P Das, learned Addl. PP, Assam.

By this application under section 438 Cr.P.C, the petitioners, namely, 1. Afser Ali & 2. Asmina Khatun have prayed for pre arrest bail who are apprehending arrest in connection with Boko PS Case No.426/2023 under sections 313/304/34 IPC.

The informant has alleged in the FIR that he had taken his 30 years old married sister to the pharmacy of the petitioner for termination of her pregnancy. The surgical procedure was carried out and the pregnancy was terminated but on the next day she died.

From the case diary it appears that the petitioner Asmina Khatun studied B Pharm at Guwahati and her husband Afser Ali was a vegetable seller. They got married and after marriage Asmina Khatun started a pharmacy. The post mortem report shows that there are blood clots inside the uterus and there was blood stain in the vaginal canal of the deceased.

The contents of the case diary clearly show that the petitioners had conducted medical procedure upon the deceased for termination of her pregnancy. The case diary further reveals that both the petitioners are not medically competent to carry out these procedures.

This court is of the opinion that there are materials for prima case criminal case against the petitioners. Both the petitioners are not entitled to the privilege under section 438 Cr.P.C and accordingly the anticipatory bail application stands dismissed.

The interim bail granted in favour of Asmina Khatun stands vacated.

Return the case diary.

JUDGE