

GAHC010221832023



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

Case No. : AB/3416/2023

NAZRUL HOQUE
S/O LT. BASCHU SK.
VILL- MOWAMARI PART -II
P.S. KAZIGAON
DIST. KOKRAJHAR

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:MAINUL HOQUE
S/O LT. MAHAR ALI SHEIKH
VILL- KAMLARJHAR
P.O. MOTERJHAR
P.S. GOLAKGANJ

DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 18.01.2024

Heard Mr. A.T. Sarkar, learned counsel for the applicant. Also heard Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Kazigaon P.S. Case No.59/2023, under Sections 448/376(AB)/511 of the IPC, read with Section 18 of the POCSO Act, this application under Section 438 Cr.P.C. has been preferred by the applicant, namely, Nazrul Hoque, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Mainul Hoque on 27.07.2023. The essence of allegation made in the FIR dated 27.07.2023, is that on 22.07.2023, his daughter Smt. X (name withheld), aged about 10 years, was in the house of her maternal grandfather, namely, Md. Samsul Ali, and at around 7:30 p.m., the applicant, namely, Nazarul Hoque, taking advantage of absence of the family members, entered into the house of Md. Samsul Ali and attempted to commit rape upon his daughter. But, somehow, she managed to escape.

4. Mr. Sarkar, learned counsel for the applicant submits that there is a delay of five days in lodging the FIR and no explanation is offered in the FIR regarding the delay and that there was financial transaction between the informant and the applicant, and when the applicant exerted pressure upon the informant to pay the same, then the informant had falsely lodged this FIR against the applicant. Mr. Sarkar further submits that the applicant is ready to cooperate with the investigating agency and that his custodial detention may not be required in the interest of investigation, and therefore, it is contended to allow

the application.

5. On the other hand, Mr. R.J. Baruah, the learned Addl. Public Prosecutor has opposed the application and by producing the case diary before this Court, submits that the I.O. has collected sufficient incriminating materials against the applicant and that the offence is of serious nature, and therefore, it is contended to dismiss the application.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and also perused the case diary with the assistance of Mr. R.J. Baruah, learned Addl. Public Prosecutor.

7. The case diary indicates that the I.O. has collected sufficient incriminating materials against the applicant and having perused the statement of the victim girl recorded under Section 164 Cr.P.C. as well as 161 Cr.P.C., this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant at this stage.

8. Accordingly, this application stands dismissed.

9. Case diary be returned.

JUDGE

Comparing Assistant