

GAHC010222212024



2024:GAU-AS:12437

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

Case No. : AB/2837/2024

MASUDUL HASAN AKAND @ MASUD SK
S/O ROSHAN JELAL
R/O VILL- KHOPATI BAZAR,
P.S. SUKCHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

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

2:JELAL HUSSAIN
S/O TOMSER ALI
R/O VILL- TATIPARA (NEAR KHOPATI BAZAR)
P.S. SUKCHAR

DIST. SOUTH SALMARA MANKACHAR
ASSAM

PIN-78312

Advocate for the Petitioner : MR Z HUSSAIN, MR A K DAS, MR. RASHIDUL ISLAM

Advocate for the Respondent : PP, ASSAM, MR. T SK (INFORMANT)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

09.12.2024

Heard Mr. Z Hussain, learned counsel for the petitioner and Mr. K K Parashar, learned Additional Public Prosecutor, Assam for the State.

2. The petitioner, namely, **Masudul Hasan Akand @ Masud SK**, son of Roshan Jelal, resident of village-Khopati Bazar, P.S.-Sukchar, District-South Salmara Mankachar, an FIR named accused in Sukchar Police Station Case No. 41/2024 registered under Sections 354(D)/366/376(3) of IPC read with Section 4 of the POCSO Act, has filed this pre-arrest bail application under Section 482 of the Bharatiya Nagarik Suraksaha Sanhita, 2023.

3. Section 438 CrPC relates to "Direction for grant of bail to person apprehending arrest" and Section 438(4) CrPC provides that – *Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).*

4. Section 438(4) of CrPC is equivalent to Section 482(4) of BNS, 2023.

5. Section 482 of the BNSS, 2023 provides for "Direction for grant of bail to person apprehending arrest" and Section 482(4) BNSS stipulates that – *Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under Section 65 and sub-section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023.*

6. Section 376 IPC is equivalent to Section 65 of BNS, 2023.

7. Said Sukchar Police Station Case No. 41/2024 against the petitioner relates to Section 376(3) IPC.

8. As such, this pre-arrest bail application of the petitioner, named above, in Sukchar Police Station Case No. 41/2024, being not maintainable, stands dismissed.

JUDGE

Comparing Assistant