

GAHC010225252024



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

Case No. : AB/2852/2024

ILIAS RAHMATULLAH
AGE 16 YEARS REPRESENTED BY THE FATHER NAMELY NUR ISLAM
AGE 44 YEARS
S/O SURUJ ALI
VILL- NO. 1 BORKUR PATHAR
P.S.-BHURAGAON
DIST- MORIGAON (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:MINARA BEGUM
W/O AIJUL HOQUE
VILL- BHUYANBARI PATHAR
P.O.-FOLIHAMARI PATHAR
P.S.-LAHARIGHAT
PIN-782127. DIST- DARRANG (ASSAM)

Advocate for : MR. M K HUSSAIN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

13/12/2024

Heard Mr. M K Hussain, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State opposite party No.1. Also heard Mr. N Zaman, learned counsel for the opposite party No. 2.

2. The petitioner, namely, **Ilias Rahmatullah**, son of Nur Islam, resident of Village No. 1 Borkur Pathar, P.S. Bhuragaon, District-Morigaon, has filed this application under Section 482 BNSS, 2023 seeking pre-arrest bail apprehending his arrest in **Laharighat P.S. Case No. 190/2024** registered under Sections 365/376(D)/506 IPC read with Section 6 of the POCSO Act corresponding to G.R. No. 1119/2024.

3. Perused the case diary placed before the Court by Mr. Sarma, learned Additional Public Prosecutor, Assam, which is upto 02.11.2024.

4. Also perused the statement of the victim girl recorded under Section 183 BNSS by the learned Sub-Divisional Judicial Magistrate (S), Morigaon on 14.09.2024, her statement recorded under Section 180 BNSS before the Investigating Officer of the case and the medical examination report of the victim girl dated 14.09.2024 issued by the Senior Medical and Health Officer, Morigaon.

5. As per the FIR of the case dated 27.06.2024 submitted before the Superintendent of Police, District-Morigaon, the petitioner, namely, Ilias Rahmatullah, son of Nur Islam, resident of Village No. 1 Borkur Pathar, P.S. Bhuragaon, District-Morigaon with another, Foizuddin, son of Late Hamed Ali, resident of Village-Bhuyanbari Pathar, P.S. Laharighat, District-Morigaon committed rape on the minor daughter of the informant/opposite party No. 2 on 25.06.2024, where the date of birth of the said minor victim is 06.08.2008 as mentioned in the FIR itself.

6. As such, on the date of the incident, i.e., on 25.06.2024 considering her date of birth as 06.08.2008, the victim is found to be 15 years 10 months 19 days old, less than 16 years of age.

7. Considering the above, Mr. Sarma, learned Additional Public Prosecutor, Assam submitted that the petitioner, Ilias Rahmatullah, son of Nur Islam and Foizuddin, son of Late Hamed Ali are accused under Section 376DA of the IPC instead of Section 376D of the IPC, as the victim is less than 16 years

of age on the date of the incident.

8. As such, this pre-arrest bail application of the petitioner, **Ilias Rahmatullah**, son of Nur Islam, in said **Laharighat P.S. Case No. 190/2024** corresponding to G.R. No. 1119/2024, **being not maintainable is rejected.**

JUDGE

Comparing Assistant