

GAHC010226292024



2024:GAU-AS:12210

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

Case No. : AB/2873/2024

EAKUB ALI @ EYAKUB ALI AND 3 ORS
S/O ISLAM SHEIKH @ ISMAIL SHEIKH, R/O VILL- CHAMRASHALI, P.O.-
KALAPANI, P.S.-MANKACHAR, DIST-SOUTH SALMARA MANKACHAR,
ASSAM, PIN-783135

2: ISLAM SHEIKH @ ISMAIL SHEIKH
S/O ABDUL SAMAD
R/O VILL- CHAMRASHALI
P.O.-KALAPANI
P.S.-MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

3: IKKA BHANU @ IKA BHANU
W/O ISLAM SHEIKH @ ISMAIL SHEIKH
R/O VILL- CHAMRASHALI
P.O.-KALAPANI
P.S.-MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

4: ABDUL SAMAD
S/O SIBAT ALI @ SIBAD ALI
R/O VILL- CHAMRASHALI
P.O.-KALAPANI
P.S.-MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

VERSUS

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

2:SANOWARA KHATUN
W/O MONIRUL ISLAM
R/O VILL- CHAMRASHALI
P.O.-KALAPANI
P.S.-MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. M R KHANDAKAR, MR. A ROHMAN

Advocate for the Respondent : PP, ASSAM, MS M DAS (R-2)

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

03.12.2024

Heard Mr. M R Khandakar, learned counsel for the petitioners and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State. Also heard Ms. M Das, learned counsel for the informant/respondent No. 2.

2. By this application filed under Section 482 BNSS, 2023 the petitioners, namely, **(i) Eakub Ali @Eyakub Ali**, son of Islam Sheikh @Ismail Sheikh; **(ii) Islam Sheikh @Ismail Sheikh**, son of Abdul Samad and **(iii) Ikka Bhanu @Ika Bhanu**, wife of Islam Sheikh @Ismail Sheikh and **(iv) Abdul Samad**, son of Sibad Ali @Sibad Ali, all resident of village Chamrashali, Police Station-Mankachar, District-South Salmara Mankachar, apprehending their arrest have prayed for their pre-arrest bail in **Mankachar Police Station Case No. 196/2024**, registered under Sections 64(2) (f)/62/126(2)/ 115(2)/351(2) BNS, 2023 read with Section 8 of the POCSO Act, 2012 corresponding to G.R. No. 432/2024.

3. As per the FIR dated 18.09.2024 lodged before the Officer-in-Charge of Kalapani Police Outpost by the informant/complainant, the case is that the informant/complainant alleged that when her daughter, aged about 17 years, went to

the house of the accused persons, i.e., the petitioners herein, to have a glass of water, the petitioner No.1 grabbed her daughter from backside and tried to commit rape on her and when she made hue and cry, the petitioner Nos. 2 and 3 assaulted the minor victim and the petitioner No. 4, after the said incident, dropped the said victim in her house. Moreover, the petitioner Nos. 2, 3 and 4 threatened the said victim, daughter of the informant not to disclose anything about the said incident to others, or else she will face the dire consequences.

4. In the said FIR, the informant/complainant also stated that the accused petitioners are her own father, brother, sister-in-law and nephew.

5. Accordingly, said FIR was registered as Kalapani Outpost GD Entry No. 81 dated 05.10.2024, which was subsequently registered as Mankachar P.S. No. 196/2024, under Sections 64(2)(f)/62/126(2)/ 115(2)/351(2) BNS, 2023 read with Section 8 of the POCSO Act, 2012 corresponding to G.R. No. 432/2024.

6. Mr. Khandakar, learned counsel for the petitioners, submitted that in the FIR it is specifically mentioned that the daughter of the informant went to the house of the accused petitioners to roam, whereas, the victim girl in her Section 183 BNSS statement recorded before the concerned Magistrate stated that she went to the house of the accused petitioners to have water and hence, there are dissimilarities between the allegation lodged against the petitioners and the statement made by the victim girl before the concerned Magistrate.

7. Perused the case diary placed before the Court today by Mr. Sarma, learned Additional Public Prosecutor, Assam. Also perused the statement of the minor victim girl recorded by the learned Judicial Magistrate First Class, South Salmara, Mankachar on 14.10.2024 under Section 183 BNSS as well as her Section 180 BNSS statement recorded by the Investigating Officer of the case. Further perused the statements of the independent witnesses acquainted with the case, so far recorded by the concerned Investigating Officer of the said case.

8. From the case diary, it is seen that police have already seized the original Birth Certificate of the minor victim girl issued by the Registrar of Births and Deaths, Gozari

Kandi, Public Health Centre on 18.09.2007, showing the date of birth of the minor victim girl as 07.09.2007. From the said Birth Certificate, it is seen that the victim girl was just above 17 years of age on the date of the incident and was a minor.

9. Case diary reveals sufficient incriminating materials against the petitioner No. 1, namely, **Eakub Ali @Eyakub Ali** with regard to his involvement in the alleged crime.

10. Considering such incriminating materials in the case diary against the petitioner No.1, namely, **Eakub Ali @Eyakub Ali**, his pre-arrest bail application in said Mankachar P.S. No. 196/2024 stands rejected.

11. However, the case diary does not indicate any such alleged incriminating materials against the petitioner Nos. 2, 3 and 4, namely, **Islam Sheikh @Ismail Sheikh, Ikka Bhanu @Ika Bhanu** and **Abdul Samad** respectively. Hence, this pre-arrest bail application of the petitioner Nos. 2, 3 and 4, named above, is accordingly accepted.

12. Accordingly, it is provided that in the event of arrest of the petitioner No.2, namely, **Islam Sheikh @Ismail Sheikh**, petitioner No.3, namely, **Ikka Bhanu @Ika Bhanu** and petitioner No.4, namely, **Abdul Samad** in said Mankachar P.S. No. 196/2024, they shall be released on bail, on furnishing bail bond of Rs 40,000/- each, with 2 (two) local sureties, each of the like amount to the satisfaction of the arresting authority, on conditions that the petitioner Nos. 2, 3 and 4, named above, – (i) shall appear before the Investigating Officer of Mankachar P.S. No. 196/2024 on or before **07.12.2024** during the office hours and thereafter, as and when they are required, for necessary investigation of said Mankachar P.S. Case No. 196/2024; **(ii)** shall not leave the territorial jurisdiction of the Mankachar 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 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 threaten the victim girl or any other members of her family, by himself or by anyone or by others, acting on his behalf; **(vi)** shall not involve themselves in any criminal activities in the future.

- 13.** Any violation of the aforesaid terms and conditions by the petitioner Nos. 2, 3 and 4, named above, the pre-arrest bail granted to them in said Mankachar P.S. No. 196/2024 shall stand automatically vacated.
- 14.** This pre-arrest bail application of the accordingly stands disposed of.
- 15.** Return the case diary herewith.

JUDGE

Comparing Assistant