

GAHC010227372023



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

Case No. : AB/3486/2023

AINUL HAQUE MAZUMDER AND ANR
S/O BABUR ALI MAZUMDER
R/O VILL- DUDHPATIL PART-V, P.S. SILCHAR, DIST. CACHAR, ASSAM

2: SAHANA BEGUM MAZUMDER
D/O BABUR ALI MAZUMDER
R/O VILL- DUDHPATIL PART-V
P.S. SILCHAR
DIST. CACHAR
ASSA

VERSUS

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

2: MINAL UDDIN MAZUMDER
S/O MD. JAINUL HAQUE MAZUMDER
R/O VILL- DUDHPATIL PART-V P.S. SILCHAR
DIST. CACHAR
ASSAM
PIN-78800

Advocate for the Petitioner : MR. A ISLAM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 07.02.2024

Heard Mr. L.R. Mazumder, learned counsel for the applicants. Also heard Mr. P.S. Lahkar, learned Addl. Public Prosecutor for the State respondent No.1.

2. Apprehending arrest in connection with Silchar P.S. Case No.1562/2023, under Sections 454/376(AB)/511 of the IPC, read with Section 8 of the POCSO Act, 2012, this application under Section 438 Cr.P.C. has been preferred by the applicants, namely, Ainul Haque Mazumder and Sahana Begum Mazumder, 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 Minal Uddin Mazumder on 18.08.2023. The essence of allegation made in the FIR dated 18.08.2023, is that on that day at about 10 a.m. in the morning, Musstt. Sahana Begum Mazumder called the daughter of the informant Smt. X, aged about 9 years and thereafter, asked her to go to the shop and while his daughter refused to go to the shop, then Sahana Begum Mazumder kept his daughter confined in a room and that Sahana Begum Mazumder tried to commit rape upon his daughter by laying her on the bed and also touched her private parts, and when his daughter raised alarm, his wife and wife of the elder brother rushed there and broke the door open and recovered his daughter, otherwise his daughter would have been killed by the applicant No. 1.

4. It is to be mentioned here that during the pendency of this application, the applicant No. 1, namely, Ainul Haque Mazumder was arrested by the police, and therefore, Mr. Mazumder, learned counsel for the applicants has pressed this

application only in respect of applicant No. 2, namely, Sahana Begum Mazumder.

5. Mr. Mazumder, learned counsel for the applicants submits that the allegations levelled in the FIR are false and the applicant No. 2 is no way involved in this offence alleged in the FIR and she is ready to cooperate with the investigating agency, and after perusing the FIR, no offence can be stated to be made out against the applicant No. 2 and therefore, it is contended to allow the application.

6. However, Mr. P.S. Lahkar, the learned Addl. Public Prosecutor has produced the case diary before this Court and submits that basically the allegation is against the applicant No. 1, who has already been arrested here in this case.

7. 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. Lahkar, learned Addl. Public Prosecutor.

8. Having regards to the materials collected so far in the case diary, specially the submission of the victim girl recorded under Section 164 Cr.P.C., this Court is of the view that prima facie case has been made out for granting pre-arrest bail to the applicant No. 2, and accordingly, this Court is inclined to allow this application.

9. Accordingly, it is provided that in the event of arrest of the applicant No. 2 in connection with Silchar P.S. Case No.1562/2023, under Sections 454/376(AB)/511 of the IPC, read with Section 8 of the POCSO Act, 2012, she shall be released on pre-arrest bail on executing a bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:

- (i) The applicant No. 2 shall make himself available for interrogation by the Investigating Officer as and when required;
- (ii) The applicant No. 2 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 him from disclosing such facts to the Court or to any police officer; and
- (iii) The applicant No. 2 shall not leave the jurisdiction of the learned C.J.M., Cachar, Silchar without prior permission.

10. In terms of above, this application stands disposed of.

JUDGE

Comparing Assistant