

GAHC010228882024



2024:GAU-AS:11378

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

Case No. : AB/2905/2024

HAFIJUR RAHMAN @ HAFIZUR RAHMAN
S/O JOYNAL ABEDIN, R/O VILL- 7 NO. BASHBARI, P.S.-MANIKPUR, PIN-
783384, DIST- BONGAIGAON (ASSAM)

VERSUS

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

2:HASNA KHATUN
W/O LATE AYNAL HOQUE
R/O VILL- SOULMARI
P.S.-ABHAYAPURI
DIST- BONGAIGAON (ASSAM)
PIN-78339

Advocate for the Petitioner : MR. S A HUSSAIN, G BORO, MR D J HALOI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

21-11-2024

Heard Mr. Gautom Boro, learned counsel for the petitioner and Mr. K K Parashar, learned APP, Assam for the State.

2. Apprehending his arrest, the petitioner, namely, **Hafijur Rahman @ Hafizur Rahman,**

son of Joynal Abedin, resident of village- 7 No. Bashbari, P.S.-Manikpur, District-Bongaigaon, an FIR named accused in Abhayapuri Police Station Case No. 512/2023 registered under Section 376 of IPC read with Section 4 of the POCSO Act, corresponding to NGR No. 872/2023 has filed this pre-arrest bail application under Section 482 of the Bharatiya Nagarik Suraksaha Sanhita, 2023.

3. After completion of the investigation of the case, police in said Abhayapuri P.S. Case No. 512/2023 submitted charge-sheet on 26.02.2024 vide Charge-Sheet No. 43/2024. During investigation, police seized the original birth certificate of the petitioner and in the said charge-sheet the date of birth of the victim girl as per her birth certificate was recorded as 07.08.2007. In the said charge-sheet filed in said Abhayapuri P.S. Case No. 512/2023 charge was framed under Section 376 IPC read with Section 6 of the POCSO Act.

4. After filing the said charge-sheet, said Abhayapuri P.S. Case No. 512/2023 was re-registered as Special (POCSO) Case No. 38(A)/2024 and on 01.04.2024, the learned Special Judge (POCSO), North Salamara, Abhayapuri in the said case took cognizance of the offence under Section 376 IPC read with Sections 6/17 of the POCSO Act. Though summons have been issued to the petitioner and duly served in said Special (POCSO) Case No. 38(A)/2024, but he did not appear in the said case before the learned Special Judge (POCSO), North Salamara, Abhayapuri and apprehending his arrest in the said case, he has filed this pre-arrest bail application in the said case.

5. Considering the FIR of the case dated 20.11.2023, where the victim was found to have pregnancy of seven months, the incident found to be occurred sometime in April, 2003. Considering the date of birth of the minor victim girl as 07.08.2007, the minor victim girl was found to be 15 (fifteen) years 8 (eight) months and in that case offence Section 376 (3) IPC has been committed by the accused.

6. As per the provisions of Section 438 CrPC equivalent Section 482(4) BNSS, anticipatory bail application for the offence under Section 376(3) IPC equivalent to Section 65(1) of the BNS is not maintainable.

7. As such, this pre-arrest bail application of the petitioner, namely, **Hafijur Rahman @ Hafizur Rahman**, in Abhayapuri Police Station Case No. 512/2023, being not maintainable,

stands dismissed.

JUDGE

Comparing Assistant