

GAHC010232212024



2024:GAU-AS:12218

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

Case No. : Bail Appln./3384/2024

JEHERUL ISLAM
S/O ABDUL MAZID ALI, R/O DAIRABARI, PS. PATACHARKUCHI, DISTRICT
BAJALI, ASSAM

VERSUS

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

2:MANISHA PARBIN
D/O MINHAZ UDDIN
R/O NAKUCHI
PS. PATACHARKUCHI
DISTRICT BAJALI
ASSAM
PIN-78135

Advocate for the Petitioner : MR H R A CHOUDHURY, M ALAMGEER,MR. I U
CHOWDHURY,MR. I A HAZARIKA

Advocate for the Respondent : PP, ASSAM, MR. K K HANDIQUE (R-2)

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

ORDER

03.12.2024

Heard Mr. H R A Choudhury, learned Senior Counsel assisted by Mr. M Alamgeer, learned counsel for the petitioner as well as Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State. Also heard Mr. K K Handique, learned counsel for the informant/opposite party No. 2.

2) By this application filed under Section 483 BNSS, 2023, the petitioner, namely, **Jeherul Islam**, son of Abdul Mazid Ali, resident of Dairabari, P.S.-Patacharkuchi, District-Bajali, has prayed for his bail in **Patacharkuchi Police Station Case No. 206/2024** registered under Sections 64/318(4) BNSS, 2023 read with Section 4 of the POCSO Act, 2012, corresponding to GR No.312/2024, in which he was arrested on 21.10.2024 and is in custody since then.

3) As per the FIR dated 20.10.2024 lodged by the informant/victim/opposite party No. 2, the case is that about six months back, while she was around 17 years 6 months old, the petitioner proposed her for marriage. But as, at that point of time, she did not attain marriageable age of 18 years, said proposal of the petitioner was not considered.

4) However, it was decided that on attaining the marriageable age, the petitioner and she, i.e., the complainant/victim will get married to the petitioner.

5) In the FIR, it is alleged by the complainant/victim that the petitioner, on the pretext of marrying her on attaining the marriageable age of 18 years, had forcefully established physical relation with her on many occasions for the last six months, inspite of her objection and resistance.

6) However, when the informant/victim attained the age of 18 years, the petitioner refused to marry her and thereby, cheated her and took advantage of her.

7) Accordingly, said FIR of the informant/victim was registered as Patacharkuchi P.S. Case No. 206/2024 under Sections 64/318(4) BNSS, 2023 read with Section 4 of the POCSO Act, 2012, corresponding to GR No. 312/2024.

8) Perused the case diary placed before the Court today by Mr. Sarma, learned Additional Public Prosecutor, Assam. Also perused the statement of the victim girl recorded under Section 183 BNSS by the learned Sub-Divisional Judicial Magistrate, Bajali on 21.10.2024 as well as her 180 BNSS statement recorded by the concerned Investigating Officer of the said case.

9) As per the forwarding report of the petitioner submitted by the Investigating Officer of the case, the petitioner was 30 years old as on 30.10.2024, whereas, as per the Birth Certificate of the victim/informant seized by the Investigating Officer of the case, she has attained 18 years of age in the month of October 2024.

10) Mr. Handique, learned counsel for the informant/opposite party No. 2, objected the bail prayer of the petitioner stating that while the victim was a minor, i.e., below 18 years of age, the petitioner made false promise to her and by inducing her that he will marry her on attaining the age of 18 years, had physical relation with her multiple times despite her objection and resistance and hence, the bail prayer of the petitioner should be rejected.

11) Perusal of the case diary reveals that the petitioner used to regularly visit the house of the victim girl in absence of her parents and that their marriage was fixed on 16.10.2024. But after attaining the marriageable age of 18 years, the petitioner and his family members started evading the victim girl and her family members.

12) Case diary also reveals that during the minor age of the victim girl, the petitioner had physical relation with her, as can be seen from the statements of the independent witnesses so far collected by the Investigating Officer of the said case.

13) From the statement of the victim girl made under Section 183 BNSS on 21.10.2024 before the concerned Magistrate as well as her statement under Section 180 BNSS made before the Investigating Officer of the said case, it is seen that she had categorically stated that on the pretext of marrying her on attaining the marriageable age of 18 years, the petitioner induced her and took advantage of having physical relation with her while she was a minor.

14) Finding such incriminating materials in the case diary against the petitioner regarding his involvement in the alleged crime, the Court is of the view that the custodial detention of the petitioner, namely, **Jeherul Islam**, since 21.10.2024, cannot be

considered for his bail in said Patacharkuchi P.S. Case No. 206/2024.

15) Accordingly, this bail application of the petitioner, named above, in said Patacharkuchi P.S. Case No. 206/2024 stands rejected.

16) Return the case diary herewith.

JUDGE

Comparing Assistant