

GAHC010236332024



2024:GAU-AS:12548

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

Case No. : AB/2972/2024

INAMUL HUSSAIN @ INAMUL HAQUE AND 3 ORS.
S/O NUR ISLAM, R/O BESAMARI DUBA, PS. BHURAGAON, DISTRICT
MORIGAON, ASSAM

2: NURUL ISLAM
S/O LATE IYAKUB ALI
R/O BARTHAL KACHARIGAON
PS. LAHARIGHAT
DISTRICT MORIGAON
ASSAM

3: IKRAMUL ISLAM

S/O NURUL ISLAM
R/O BALIPARA JANGAL
P.S. BHURAGAON
DISTRICT MORIGAON
ASSAM

4: ANAMUL HUSSAIN
S/O ABUL HUSSAIN
R/O BALIPARA JANGAL
P.S. BHURAGAON
DISTRICT MORIGAON
ASSA

VERSUS

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

2:SRI RAMEN BORDOLOI

S/O LATE HARENDRA BORDOLOI

R/O BESMARI DUBA
P.S. BHURAGAON
DISTRICT MORIGAON
ASSA

Advocate for the Petitioner : MR. S MUNIR, MR. KHAIRUL ISLAM, MR. N HOQUE

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

11/12/2024

Heard Mr. S Munir, learned counsel for the petitioners and Mr. K K Parashar, learned Additional Public Prosecutor, Assam for the State.

2. The petitioners, namely, **(1) Inamul Hussain @ Inamul Haque**, son of Nur Islam, resident of Besamari Duba, P.S. Bhuragaon, District-Morigaon, **(2) Nurul Islam**, son of Late Iyakub Ali, resident of Barthal Kacharigaon, P.S. Laharighat, District-Morigaon, **(3) Ikramul Islam**, son of Nurul Islam, resident of Balipara Jangal, P.S. Bhuragaon, District-Morigaon and **(4) Anamul Hussain**, son of Abul Hussain, resident of Balipara Jangal, P.S. Bhuragaon, District-Morigaon, have filed this application under Section 482 BNSS, seeking pre-arrest bail apprehending their arrest in **Bhuragaon P.S. Case No. 88/2024** registered under Section 376 AB of IPC read with Section 6 of POCSO Act, 2012 corresponding to G.R. No.1308/2024.

3. Petitioner No. 1 is the FIR named accused in said Bhuragaon P.S. Case No. 88/2024.

4. As per the FIR dated 20.10.2024 lodged before the Officer-in-Charge of Bhuragaon Police Station by the informant/complainant/opposite party No. 2, the case is that the petitioner No. 1 without the knowledge of the family members inducing his niece, a minor victim girl of 12 years old, committed bad work with her since last one year. When the villagers brought it to his notice, he enquired from his niece, the minor victim girl, who in presence of the villagers admitted the fact that the petitioner No. 1 committed bad work with her, who happens to be the father of two children. The petitioner No. 2 is the father of the petitioner No. 1; the petitioner No. 3 is the brother of the petitioner No. 1 and the petitioner No. 4 is the brother-in-law of the petitioner No. 1.

5. Section 438 Cr.P.C. relates to "Direction for grant of bail to person apprehending arrest" and Section 438(4) Cr.P.C. provides that – *Nothing in this Section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DA of the Indian Penal Code (45 of 1860).*
6. Section 438(4) of Cr.P.C. is equivalent to Section 482(4) of BNS, 2023.
7. Section 482 of the BNSS, 2023 provides for "Direction for grant of bail to person apprehending arrest" and Section 482(4) BNSS stipulates that – *Nothing in this Section shall apply to any case involving the arrest of any person on accusation of having committed an offence under Section 65 and Sub-Section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023.*
8. Section 376 IPC is equivalent to Section 65 of BNS, 2023.
9. Said Bhuragaon P.S. Case No. 88/2024 against the petitioner No. 1 relates to Section 376 AB of IPC.
10. As such, this pre-arrest bail application with regard to the petitioner No. 1, namely, **Inamul Hussain @ Inamul Haque**, son of Nur Islam in said **Bhuragaon P.S. Case No. 88/2024**, being not maintainable, stands rejected.
11. Perused the case diary placed before the Court by Mr. Parashar, learned Additional Public Prosecutor, Assam.
12. However, considering the materials available in the case diary, the Court is of the view that custodial detention of the petitioner Nos. **(2) Nurul Islam, (3) Ikramul Islam, and (4) Anamul Hussain**, is not warranted to investigate the said Bhuragaon P.S. Case No. 88/2024. As such, this pre-arrest bail application with regard to the petitioner Nos. 2, 3 and 4, named above, is accepted.
13. Accordingly, in the event of arrest of the petitioner Nos. **(2) Nurul Islam, (3) Ikramul Islam, and (4) Anamul Hussain**, in said **Bhuragaon P.S. Case No. 88/2024** registered under Section 376 AB of IPC read with Section 6 of POCSO Act, 2012 corresponding to G.R. No.1308/2024, they shall be released on bail on furnishing a bail bond of Rs.40,000/- each, with 2 (two) local sureties each of the like amount, one of which shall be a Government employee, either State or Central Government, to the satisfaction of the arresting authority, subject to the conditions that the petitioner - **(i)** shall appear before the concerned Investigating Officer of said Bhuragaon P.S. Case No. 88/2024

on or before 19.12.2024 and thereafter, as and when they are required for necessary investigation of the case; **(ii)** shall not leave the territorial jurisdiction of said Bhuragaon Police Station, without obtaining prior written permission from the concerned I/O 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; **(v)** shall not involve themselves in any kind of criminal activities directly or indirectly and **(vi)** shall not threaten the minor victim girl or anyone in her family by either of them or by them together or by others or by anyone, acting on their behalf.

14. Violation of any of the aforesaid terms and conditions by any of the petitioner Nos. **(2) Nurul Islam, (3) Ikramul Islam,** and **(4) Anamul Hussain,** the pre-arrest bail granted to them in said **Bhuragaon P.S. Case No. 88/2024** shall stand automatically vacated.

15. Accordingly, this pre-arrest bail application stands disposed of to the extent above.

16. Return the case diary.

JUDGE

Comparing Assistant