

GAHC010243312023



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

Case No. : AB/3682/2023

NURUL AMIN
S/O ABDUS SALAM,
VILL.- JARATHANI, P.S.- RUPAHI, DIST.- NAGAON, ASSAM, PIN- 782125.

VERSUS

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

2:MOJIBAR RAHAMN
S/O LT. KHURSHED ALI

VILL.- TELIACHAPORI TUP
P.S.- RUPAHIHAT
DIST.- NAGAON
ASSAM
PIN- 782125

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

09.01.2024

Heard Mr M U Mahmud, learned counsel for the petitioner, Nurul Amin and Ms N Das, learned Additional Public Prosecutor for the State of Assam. Also heard Mr P

Borah, learned counsel for the respondent No. 2.

2. The petitioner has filed this application under Section 438 CrPC, with prayer for pre-arrest bail, as he is apprehending arrest in connection with Rupahihat PS Case No. 49/2023, under Sections 366/376/34 IPC, read with Section 4 of the POCSO Act, 2012.

3. The learned counsel for the respondent No. 2 has no objection.

4. I have considered the submissions at the Bar. I have also perused the Case Diary.

5. The FIR was lodged by the victim's father, Mojibur Rahman that, the accused No. 1 (named in the FIR) kidnapped the victim and committed sexual assault on her. The accused No. 2, present petitioner herein, confined the victim in his house.

6. It is submitted on behalf of the petitioner that he is the accused No. 2, named in the FIR. His name and address was erroneously written and so a clarification has been made by an additional affidavit submitted by the petitioner.

7. It is also submitted on behalf of the petitioner that the accused No. 1 is married to the victim and accused No. 2 had provided shelter to the victim.

8. This is not a case under the POCSO Act as the victim has eloped with the accused No. 1 and at present, she is married to the accused No. 1.

9. Investigation has progressed to a considerable extent.

10. It appears that custodial interrogation may not be required in this case.

11. The petitioner has made out a *prima facie* case for pre-arrest bail.

12. Considering all aspects, petition is allowed. In the event of his arrest, the petitioner shall be enlarged on bail of Rs. 50,000/-, with a suitable surety of the like amount to the satisfaction of the arresting authority, under the conditions that-

- i) the petitioner shall appear before the IO within 10 days and cooperate with the investigation, and
- ii) the petitioner shall not exercise threats to the witnesses.

On breach of any of the bail conditions, the bail order shall stand cancelled.

13. Anticipatory Bail Application stands disposed of.

14. Send back the Case Diary.

JUDGE

Comparing Assistant