

GAHC010249512023



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

Case No. : AB/3742/2023

REJAUL HOQUE @ REJAUL HAQUE AND 3 ORS.
S/O SABAN ALI
R/O VILL- KASHIMPUR,
P.O. AND P.S. KACHUMARA,
DIST. BARPETA, ASSAM ,
PIN-781127

2: SABAN ALI
S/O LATE SAIJUDDIN AHMED
R/O VILL- KASHIMPUR
P.O. AND P.S. KACHUMARA
DIST. BARPETA
ASSAM
PIN-781127

3: RAHUL AMIN @ RUHUL AMIN
S/O SABAN ALI
R/O VILL- KASHIMPUR
P.O. AND P.S. KACHUMARA
DIST. BARPETA
ASSAM
PIN-781127

4: A HAI NAGARIK @ ABDUL HAI
S/O A. GAFUR
R/O VILL- SHIMULBARI
P.O. AND P.S. KACHUMARA
DIST. BARPETA
ASSAM
PIN-78112

VERSUS

THE STATE OF ASSAM

REP. BY THE PP, ASSAM

2:AYESHA KHATUN
W/O JIAUR RAHMAN
VILL - 02 TUPAMARI
PO - TUPAMARI
PS - NAGARBERA
DIST - KAMRUP
ASSAM
PIN 781127

3:HABIBI AKHTAR
D/O JIAUR RAHMAN
VILL - 02 TUPAMARI
PO - TUPAMARI
PS - NAGARBERA
DIST - KAMRUP
ASSAM
PIN 781127

4:Ayesha Khatun
W/O-Jiaur Rahman
Vill- No.Tupamari
P.O.- Tupamari
P.S.- Nagarbera
Dist- Kamrup
Assam
Pin- 78112

Advocate for the Petitioner : MR. J A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18-07-2024

- 1.** Heard Ms. S. Naznin, learned counsel for the petitioners. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 438 of the Code of Criminal Procedure,

1973 has been filed by the petitioners, namely, (1) Rejaul Hoque @ Rejaul Haque (2) Saban Ali (3) Rahul Amin @ Ruhul Amin (4) A. Hai Nagarik @ Abdul Hai, who were apprehending their arrest in connection with Nagarbera P.S. Case No. 113/2023 under Sections 366/448/325/506/34 with added Section 376(3) of the Indian Penal Code read with Section 6 of the POCSO Act, 2012.

3. The gist of accusation is that one Ayesha Khatun had lodged an FIR on 11.10.2023 before the Officer-in-Charge of Tupamari Out Post under Nagarbera Police Station, *inter alia*, alleging that her daughter who is aged about 16 years was missing since 28.09.2023 and on 3rd October, 2023 Police recovered her daughter and from her daughter she came to know she was forcefully taken away and was kept confined in unknown places for five days and subjected to physical torture and was threatened that unless she marries the petitioner No. 1, her parents will be killed.

4. The learned counsel for the petitioners has submitted that the allegations made in the FIR are not true and the petitioners were arrested and the trial against the child marriage was going on. It is also submitted that victim is the legally married wife of the petitioner No. 1.

5. The learned counsel for the petitioners has submitted that in the meanwhile by order dated 08.11.2023, the Petitioner Nos. 2, 3 and 4 were allowed to go on interim anticipatory bail and they are co-operating in the investigation.

6. On the other hand, the learned Additional Public Prosecutor has produced the case diary of Nagarbera P.S. Case No. 113/2023 and has submitted that the present application under Section 438 of the Code of

Criminal Procedure is not maintainable as there is statutory bar under Section 438(4) of the Code of Criminal Procedure, 1973 regarding entertaining any such application where accusation is of having committed an offence under Sub-Section (3) of Section 376 of the Indian Penal Code. He has also submitted that in the instant case, the statement of the victim has been recorded under Section 164 of the Code of Criminal Procedure, 1973 and in her statement the victim is categorically stated that she was forcefully kidnapped by the accused persons and she was forcefully married to the petitioner No. 1 and subjected to forceful sexual intercourse and, hence, he has prayed for dismissal of the anticipatory bail application and vehemently opposed the grant of anticipatory bail.

7. I have considered the submissions made by the learned counsel for both the sides and have perused the materials on record including the case diary of Nagarbera P.S. Case No. 113/2023.

8. On perusal of the case diary including the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure, 1973, it appears that there are sufficient incriminating materials against the petitioners under Section 376(3) of the Indian Penal Code. Moreover, as the accusation has been made against the petitioners under Sections 376(3)/34 of the Indian Penal Code against all the petitioners, in view of the statutory bar under Section 438(4) of the Code of Criminal Procedure, this Court is of considered opinion that the instant anticipatory bail application is not maintainable.

9. Accordingly, the prayer of anticipatory bail application of the petitioners is hereby rejected on not being maintainable due to statutory bar of Section 438(4) of the Code of Criminal Procedure, 1973.

10. The interim anticipatory bail granted to the petitioner Nos. 2, 3 and 4 by order dated 08.11.2023 is hereby vacated and this anticipatory bail application is accordingly disposed of.

11. Send back the case diary.

JUDGE

Comparing Assistant