

GAHC010252472023



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

Case No. : AB/3798/2023

SHORIFUL ISLAM
S/O NUR AHMED
R/O VILL- MAHIMARI,
P.S. GOROIMARI
DIST. KAMRUP, ASSAM

VERSUS

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

2:AJIBAR RAHMAN
S/O LATE KHALIL DEWANI
R/O VILL-MAHIMARI

P.S. GOROIMARI
DIST. KAMRUP
ASSA

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.01.2024

Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. K.K.

Das, learned Additional Public Prosecutor, appearing for the State of Assam as well as Mr. J. Hussain, learned counsel appearing for respondent No. 2.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Shoriful Islam, who is apprehending his arrest in connection with Goroimari P.S. Case No. 94/2023 under Section 376/511/448/294/506 of the Indian Penal Code read with Section 8 of the POCSO Act.

The gist of accusation in this case is that on 22.09.2023, one Ajibor Rahman had lodged an FIR before the Officer-In-Charge of Goroimari Police Station, *inter-alia*, alleging that the accused No. 1 named in the FIR, i.e. the present petitioner, on 19.09.2023, had called the minor daughter of the informant to his house and tried to commit physical relationship with her and when the daughter-in-law of the first informant screamed the accused fled from that place.

It is also alleged that the other accused persons named in the FIR, i.e. accused Nos. 2, 3 and 4 mentioned in the FIR, who are relatives of the present petitioner have threatened the first informant not to lodge any FIR in this regard.

Learned counsel for the petitioner has submitted that the present petitioner is a young boy of 18 years of age and is a student of Higher Secondary final year and his examinations are scheduled to be held from 12th February 2024.

It is also submitted by the learned counsel for the petitioner that the allegations leveled against the present petitioner in the FIR are false and is a conspiracy hatched by the informant as there is a land dispute between the family members of the present petitioner and the first informant.

Learned counsel for the petitioner has also submitted that the petitioner will co-operate in the investigation, if he is allowed to go on bail.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Goroimari P.S. Case No. 94/2023 and has vehemently opposed the grant of anticipatory bail to the present petitioner at this stage submitting that there are implicating materials against the present petitioner in the case diary including the statement of the victim made under Section 164 of the Code of Criminal Procedure, 1973.

On the other hand, Mr. J. Hussain, learned counsel appearing for the respondent No. 2 has also opposed the grant of anticipatory bail to the present petitioner on the ground that the other accused persons named in the FIR, who are already allowed to go on anticipatory bail are threatening the victim and her family not to pursue the matter any further.

I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record including the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure, 1973. The present petitioner is a young boy of 18 years of age and if we look at the statement made by the victim girl under Section 164 of the Code of Criminal Procedure, 1973, the only allegation levelled against the present petitioner by her is that the petitioner held her hand and touched her cheek and nothing else was done by the petitioner as he fled thereafter on the shouting of the victim girl.

Under such circumstances, considering the statement of the victim girl and the implications made by her against the present petitioner and also considering the fact that the present petitioner would be appearing in his Higher Secondary final year examination from 12th February, 2024, this Court is inclined to give

anticipatory bail to the present petitioner with certain conditions.

In view of above, the present petitioner is hereby directed to appear before the Investigating Officer of Goroimari P.S. Case No. 94/2023, within a period of 10(ten) days from the date of this order and co-operate in the investigation. If he does so within the stipulated period of time, in the event of his arrest in connection with Goroimari P.S. Case No. 94/2023, the above named petitioner shall be allowed to go on interim bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

- (i) the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court;
- (ii) the petitioner shall co-operate in the investigation; and
- (iii) the petitioner or his family members shall not in any manner threaten the victim or her family members and any violation of this condition may be a good ground for cancellation of the bail granted to the present petitioner.

With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant