

GAHC010254302023



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

Case No. : AB/3835/2023

SALMA BEGUM
D/O SAFIKUL ISLAM
R/OJAMUNA MOUDANGA
KRISHIPAM NIGAM
P.S. MURAJHAR
DIST. HOJAI, ASSAM

VERSUS

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

2:MD. SAHJAHAN ALI
S/O LATE ABDUL REZZAK MUNSHI
VILL- JAMUNA MOUDANGA
KRISHIPAM NIGAM
P.S. MURAJHAR
DIST. NAGAON ASSAM
PIN-78244

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

12.02.2024

Heard Mr HRA Choudhury, learned Senior Counsel for the petitioner, Salma

Begum.

2. The petitioner has filed this application under Section 438 CrPC, with prayer for bail, apprehending her arrest in connection with Special POCSO Case No. 202 of 2023, arising out of Murajhar PS Case No. 162/2023, under Sections 120B/342/370(4)/372 IPC, read with Section 75 of the Juvenile Justice Act, read with Section 6 of the POCSO Act.

3. Notices have been issued to the respondent No. 2, who has received the notice. However, respondent No. 2 is not represented today.

3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

4. The FIR unfolds that in the month of February, 2023, the informant's daughter aged 16 years was taken by a woman, namely, Parbina Begum (accused No. 1 in the FIR), by inducing her with false promises to provide her employment in a private hospital at Delhi, but no work was provided to her. The informant's 16 year old daughter was taken to Dehradun, where she was confined and forcefully engaged in immoral trafficking.

5. The petitioner is the elder sister of accused No. 1, Parbina Begum, and it is alleged that the petitioner helped the accused No. 1, with such immoral acts. The informant's minor daughter, however, escaped from her confinement and took shelter under the Childline at Dehradun.

6. It is submitted that the accused Nos. 1, 3, 4, 5, 6 and 7, named in the FIR, are all enlarged on bail. The petitioner has also prayed for bail on the ground of parity.

7. It is also submitted on behalf of the petitioner that the petitioner is a woman, who is

only 23 years old.

8. The learned counsel for the petitioner has also relied on the decision of Hon'ble the Supreme Court *in Mahdoom Bava –vs- CBI*; reported in 2023 LiveLaw (SC) 218, wherein it has been held that-

“10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals.”

9. I have considered the submission that charge sheet has been laid against the petitioner. The petitioner is willing to cooperate with the trial. The petitioner being a local resident is also not a flight risk.

10. I have taken a pragmatic view.

11. In the light of the decision of Hon'ble the Supreme Court in *Mahdoom Bava (supra)*, petition is allowed. In the event of her 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 learned Special Judge, Shankardevnagar, Hojai under the conditions that:-

- i) the petitioner shall appear before the learned trial Court, within 10 (ten) days and cooperate with the trial,
- ii) the petitioner shall refrain from such activities with which she is alleged,
- iii) the petitioner shall not leave the jurisdiction of the learned Court, without prior permission, till completion of the trial, and
- iv) the petitioner shall not influence the witnesses.

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

12. Bail Application stands disposed of.

JUDGE

Comparing Assistant