

GAHC010257452023



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

Case No. : AB/3960/2023

MIZARUL ISLAM
S/O MD. ASHRAB ALI
R/O VILL- 1 NO. GAYAN GAON
P.S. DHING
DIST. NAGAON, ASSAM
PIN-782001.

VERSUS

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

2:MD. SAHIDUL ISLAM
S/O MD. ISMAIL HUSSAIN
R/O VILL- 1 NO. GAYAN GAON
P.S. DHING
DIST.NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

15.03.2024

Heard Mr. T. Deuri, learned counsel for the applicant and Mr. P.S.

Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This application, under Section 438 of the Code of Criminal Procedure, is preferred by applicant namely, **Mizarul Islam**, who has been apprehending arrest in connection with **Dhing P.S. Case No. 154/2023**, under Sections 448/376(2)(i)/511/354(B) of the IPC, read with Section 8 of the POCSO Act, for grant of pre-arrest bail.

3. The said case has been registered on the basis of one FIR lodged by one Sahidul Islam, on 23.08.2023. The essence of allegations made in the FIR is that on 18.08.2023, in absence of the family members of the informant in the house, one Mizarul Islam entered into his house and committed rape upon his sister Smti 'X' (name withheld), aged 12 years, under threat.

4. Mr. Lahkar, learned Additional Public Prosecutor submits that the IO has completed investigation and submitted charge sheet, being C.S. No. 203/2023, dated 31.12.2023, under Sections 448/ 376(2)(i)/ 511/ 354(B) of the IPC, read with Section 8 of the POCSO Act. Mr. Lahkar further submits that the offences are serious in nature and therefore, it is contended to dismiss the petition.

5. On the other hand, Mr. Deuri, learned counsel for the applicant submits that the allegation against the applicant is false and that he is ready to face trial and therefore, it is contended to allow the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record.

7. Since the case has already been charge sheeted, this court is inclined to dispose of this application by directing the applicant to appear before the learned **Special Judge, POCSO, Nagaon** on or before 04.04.2024, and to apply for regular bail and in event of filing such an application, the learned Court below

shall consider the same in accordance with law.

8. In the interim, it is provided that in the event of arrest of the applicant in connection with **Dhing P.S. Case No. 154/2023**, under Sections 448/376(2) (i)/511/354(B) of the IPC, read with Section 8 of the POCSO Act, he shall be released on interim pre-arrest bail on his executing a bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the arresting authority, till his appearance before the learned Court below on or before 04.04.2024.

9. The above privilege is however subject to the following conditions:-

[i] The applicant shall appear before the court of learned **Special Judge, POCSO, Nagaon**, on or before 04.04.2024; and

[ii] The applicant shall not leave the jurisdiction of the learned **Special Judge, POCSO, Nagaon** without prior permission;

10. In terms of above, this AB stands disposed of.

Comparing Assistant

JUDGE