

GAHC010261712023



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

Case No. : AB/3977/2023

MAINUL HOQUE
S/O- ABU BAKKAR ALI, R/O- VILLAGE- BARUNDANGA, P.O.
BARUNDANGA, P.S. TAMARHAT, DIST.- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PUBLIC PROSECUTOR

2:SRI MONOWAR HUSSAIN
S/O- HAJARAT ALI
R/O- VILLAGE- BARUNDANGA
P.O. BARUNDANGA
P.S. TAMARHAT
DIST.- DHUBRI
ASSA

Advocate for the Petitioner : MR I HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.02.2024

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

Mr. M.P. Goswami, learned Addl.P.P. for the State.

This is an application made under **Section 438 Cr.P.C.**, seeking pre-arrest bail by the petitioner, namely, **Mainul Hoque**, apprehending arrest in connection with **Tamarhat P.S. Case No. 122/2023(corresponding to GR Case No. 1500/2023)**, registered under Section 376(3) IPC r/w Section 4 of POCSO Act.

Mr. Goswami, learned Addl.P.P. submits that this bail application is not maintainable due to bar under Section 438(4) of Cr.P.C.

Mr. Haque, learned counsel for the petitioner submits that as there is provisional bar, he has nothing to say regarding maintainability of the bail application.

Section 438(4) Cr.P.C. provides that 'nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code.'

I have considered the submissions made by the learned counsel for the parties.

It appears that the case is registered under Section 376(3) IPC along with POCSO Act. Hence, in view of the provision as mentioned above, the present bail application under Section 438 Cr.P.C. is not maintainable and disposed of accordingly.

JUDGE