

GAHC010263202023



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

Case No. : AB/3954/2023

MD NITUL ALI
S/O MD. UMAR ALI
R/O VILL- SATGAON
P.S. BAIHATA CHARIALI
DIST. KAMRUP, ASSAM
PIN-781030

VERSUS

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

2:MD. KHABIRUDDIN AHMED
S/O LATE RAHMAN ALI
R/O VILL- SATGAON
P.O. BARBAKA
P.S. BAIHATA CHARIALI
DIST. KAMRUP, ASSA

Advocate for the Petitioner : MR S DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

19.01.2024

Heard Mr. S. Deka, learned counsel for the applicant and also heard Mr. B. Sarma,

learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. Apprehending arrest in connection with Baihata Chariali P.S. Case No.327/2023, under Section 376(2)(i)/313/506 IPC, read with Section 6/21 of the POCSO Act, this application under Section 438 Cr.P.C. is preferred by the applicant, namely, Md. Nitul Ali, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Khabiruddin Ahmed on 24.10.2023. The essence of allegation made in the aforesaid FIR is that one Nitul Ali of Satgaon under Baihata Chariali P.S. maintained sexual relationship with his daughter, namely, Smt. X (name withheld) for last 8 years, from 14 years of her age, alluring to marry her. As a result of which, she became pregnant and thereafter, accused Nitul Ali administered some tablet and got her pregnancy aborted and thereafter, again she became pregnant and having failed to get the pregnancy aborted by administering tablet this time, accused Nitul Ali took her to Oval Multispeciality Hospital and got the pregnancy aborted there and thereafter, he agreed to marry his daughter, but because of exerting pressure upon him by one Umar Ali, Ratul Ali, Arjina Begum, Harun Ali, Habil Ali, Rahil Ali, Imran Ali and Sajahan Ali, he declined to marry her.

4. Mr. Deka, learned counsel for the applicant submits that though the case is registered under Section 6/21 of the POCSO Act, yet the said sections are not attracted, because at the time of filing of the FIR the age of the victim was admittedly 22 years and that this Court vide order dated 23.11.2023 was pleased to grant the privilege of interim pre-arrest bail to the applicant and pursuant to the said order, the applicant had appeared before the I.O. and he has been cooperating with the investigating agency and therefore, Mr. Deka contended that the interim order dated 23.11.2023, may be made absolute, in the same terms and conditions.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor has produced the case diary before this Court and submits that the victim girl and other witnesses have implicated the applicant with the offence alleged in the FIR and that the offences are serious in nature and therefore, Mr. Sarma contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Sarma, learned Additional P.P.
7. The case diary indicates that though the victim was 23 years old at the time of recording her statement under Section 164 Cr.P.C. on 25.10.2023, yet it appears that the accused maintained relationship with her since 15 years of her age and in view of the materials collected so far in the case diary and the medical report, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant and accordingly, the petition stands dismissed. Case diary be returned.
8. Interim order passed earlier stands vacated.

Sd/- Robin Phukan
JUDGE

Comparing Assistant