

GAHC010274992023



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

Case No. : AB/4137/2023

MD. ASIDUL ALI @ ASIDUL SK
S/O KOBAL ALI
VILL- JAOLIAPARA
P.O. KOKRAJHAR
P.S. AND DIST. KOKRAJHAR, BTR, ASSAM, PIN- 7813370

VERSUS

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

2:HAFIJUR ALI PARAMANIK
(COMPLAINANT)
S/O LATE MAJID ALI PARAMANIK
VILL- SONAMOYEEPARA
P.O. RAINADABRI
P.S. AND DIST. KOKRAJHAR
BTR
ASSAM
PIN-781337

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 11-01-2024

1. Heard Mr. M.U. Mahmud, learned counsel for the petitioner.
2. The petitioner Asidul Ali @ Asidul Sk has filed an application u/s 438 Cr.PC with prayer of pre-arrest bail as he is apprehending arrest in connection with Kokrjhar Police Station Case No. 347/2023 registered under Sections 366(A)/376 IPC, R/W – Section 6 of POCSO Act, 2012.
3. Heard Ms. N. Das, learned Addl. P.P., Assam.
4. The learned Addl. PP has raised objection.
5. Notices were issued to the informant but notices were not accepted by the informant, so notices could not be served. The petitioner has filed an affidavit stating that the informant has not accepted notice as this case by the informant, minor victim and the petitioner has been mutually settled. The respondent No. 2 is not represented today.
6. It is submitted on behalf of the petitioner that the incident occurred allegedly on 09.01.2023 whereas the FIR was lodged on 33.09.2023 i.e. after 8 months. Its admitted that the petitioner and the victim had a love relationship and the petitioner who promised to marry the victim did not marry as the victim was a minor. It is submitted on behalf of the petitioner that as the petitioner got married to another girl a false case has been lodged against him. The Annexure-2 clearly reveals the mutual agreement between the informant and the petitioner.
7. The learned Addl. PP has raised objection stating that this is a case u/s 376 IPC as the petitioner who promised to marry the victim did not marry her. It is submitted that there are incriminating materials in the Case Diary against the present petitioner.
8. I have scrutinised the Case Diary.
9. The merits of the case are not taken to consideration at this juncture, and are not brought to the fore. I have considered the submission that the petitioner is a local resident and he has pledged to co-operate with the investigation. I have also considered the submissions at the Bar with circumspection. Investigation has also progressed to a considerable extent. It appears that custodial interrogation may not be required at this stage.

10. Considering all aspects, petition is allowed. In the event of his arrest the petitioner shall be enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the arresting authority under the conditions that:-

- [i] The petitioner shall appear before the IO within 10 days from today and co-operate with the investigation; and
- [ii] the petitioner will not tamper with the evidence and not exercise threats to witnesses.

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

Send back the Case Diary.

JUDGE

Comparing Assistant