

GAHC010284802023



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

Case No. : AB/4244/2023

SADDAM ALI SK
S/O ABDUL WAHAB ALI SK.
R/O VILL- BORCHORA, P.S. AND DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:ROMAKANTA BARUAH
S/OLATE DHANESWAR BARUAH
VILL- BIDYAPUR OUT POST
P.S. AND DIST. BONGAIGAON
ASSAM, PIN-783390

3:JAYDA KHATUN
W/O SADDAM ALI SK.
R/O VILL- BORCHORA
P.S. AND DIST. BONGAIGAON, ASSA

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

11.01.2024

Heard Mr. M. Khan, learned counsel for the applicant and also heard Mr. B. Sarma,

learned Additional Public Prosecutor, Assam, appearing for the State respondent Nos.1 and 2 and Ms. K. Barman, learned counsel appearing for the respondent No.3.

2. This application, under Section 438 Cr.P.C. is preferred by the applicant, namely, Saddam Ali Sk., who has been apprehending arrest in connection with Special (P) Case No.52(BGN)/2023 arising out of Bongaigaon P.S. Case No.70/2023 under Section 17 of the POCSO Act, read with Section 9/10 of the Prohibition of Child Marriage Act, 2006, 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 UBC Rama Kanta Baruah of Bidyapur Out Post, under Bongaigaon P.S. on 02.02.2023. The essence of allegation made in the aforesaid FIR is that one girl, namely, Smt. X (name withheld) of Borchora village was forcefully married to one Saddam Ali Sk. of Borchora village and that at the relevant point of time, the girl has not attained the majority.

4. Mr. Khan, learned counsel for the applicant, referring to Annexure-3, the Admit Card, issued by the Board of Secondary Education, submits that the marriage took place on 06.03.2022, and the date of birth of the girl is 02.03.2004, and on the date of marriage she has already attained majority and that the said marriage was solemnized as per Muslim Rights and the same was also registered in the office of the Muslim Marriage and Divorces Register, Bilasipara on 23.05.2022 and that no offence under Section 6 of the POCSO Act and under Prohibition of Child Marriage Act, 2006 is made out against the applicant and therefore, Mr. Khan contended to allow the petition.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, having gone through the record fairly submits that on the date of marriage the victim girl was more than 18 years old.

6. Ms. Barman, learned counsel for the respondent No.3, the victim, submits that she has no objection in the event of allowing this anticipatory bail application and that the date of birth as mentioned in Annexure-3 is the correct date of birth of the victim girl.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

8. It appears from the Annexure-3, the Admit Card, issued by the Board of Secondary Education, that the date of birth of the victim girl is 02.03.2004, and it also appears that the marriage was solemnized on 06.03.2022 and on that day the victim girl has attained the majority. In view of above and also in view of the submission of learned Advocates of both sides, this Court is of the view that a prima facie case for granting relief under Section 438 Cr.P.C. appears to be made out here in this case and accordingly, this Court is inclined to allow this petition.

9. It is provided that in the event of arrest of the applicant, namely, Saddam Ali Sk., in connection with Special (P) Case No.52(BGN)/2023 arising out of Bongaigaon P.S. Case No.70/2023 under Section 17 of the POCSO Act, read with Section 9/10 of the Prohibition of Child Marriage Act, 2006, he shall be released on interim pre-arrest bail on his executing a bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, granted till 30.01.2024 because on that day the applicant shall appear before the learned Court below and apply for regular bail and in the event of filing such an application, the learned Court below shall consider the same in accordance with law.

10. In terms of above, this anticipatory bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant