

GAHC010288032023



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

Case No. : AB/4276/2023

MD JUBER AHMED @ MD JUBAID AHMED
S/O. LT. ABDUL SATTAR, R/O. ROWARPAR. P.O. KOROIGURI, P.S.
MURAJHAR, DIST. HOJAI, ASSAM, PIN- 782440.

VERSUS

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

2:RUSNARA BEGUM
W/O- TAIYAB ALI
R/O VILL- PASCHIM JAMUNA GAON
P.O.- KOROIGURI
P.S.- MURAJHAR
DIST- HOJAI
ASSAM
PIN- 78244

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

30.01.2024

Heard Mr. S. Biswas, learned counsel for the applicant and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with **Murajhar P.S. Case No. 231/2023**, under Section 376 AB of the IPC read with Section 6 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Md. Juber Ahmed @ Md. Jubaid Ahmed** for grant of pre-arrest bail.

3. It is to be noted here that the said case has been registered on the basis of one F.I.R., lodged by one Rusnara Begum, on 08.11.2023. The essence of allegation made in the FIR is that on 08.11.2023, at about 1:30 pm, her daughter Smti 'X' [name withheld], aged 10 years, informed her that the applicant, who is the Head Master of the school, in which informant's daughter was pursuing studies, committed rape upon her in the bathroom of the school and prior to that day also, the applicant subjected her to sexual harassment and also threatened her not to disclose the same to others.

4. Mr. Biswas, learned counsel for the applicant submits that the allegations made in the FIR are false and fabricated and there exists no prima-facie material against the present applicant. Mr. Biswas further submits that the husband of the informant has been occupying a plot of land belonging to the school and the school management committee had asked the applicant to vacate the said land and when the applicant had taken step to vacate the said land then the informant had lodged the false case. Mr. Biswas also submits that the applicant is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Gogoi, learned Addl. P.P. by producing the case diary before this Court submits that this application under Section 438 of the Cr.P.C. is not maintainable, in view of the bar of Sub-Section 4 of Section 438 Cr.P.C. Mr. Gogoi further submits that the IO has collected sufficient

incriminating materials against the applicant and therefore, it is contended to dismiss the application.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary produced before this Court with the assistance learned Additional Public Prosecutor.

7. In view of the materials so far collected in the case diary, especially the statement of the victim girl recorded under Section 164 of the Cr.P.C. and also in view of the age of the victim girl, whose date of birth was 09.02.2013, this Court is of the view that this application under Section 438 of the Cr.P.C. is not maintainable, in view of the bar of Sub-Section 4 of the said Section.

8. Accordingly, this application is dismissed.

9. The case diary be returned.

Comparing Assistant

JUDGE