

GAHC010288092023



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

Case No. : AB/4323/2023

AMIR HUSSAIN
S/O- LATE AFSOR ALI,
R/O- VILLAGE DHUPAGURI PATHAR,
P.S- DHING, DIST- NAGAON, ASSAM

VERSUS

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

2:NUR NEHAR BEGUM
W/O- SAIFUL ISLAM
R/O- VILLAGE DHUPARGURI PATHAR
P.S- DHING
DIST- NAGAON
ASSA

Advocate for the Petitioner : MR. JUNM LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

06.03.2024

Heard Mr. J.U.N.M. Laskar, learned counsel for the applicant; Mr. B.

Sarma, learned Additional Public Prosecutor for the State respondent No. 1; and Ms. S.Z. Hayat, learned counsel for the respondent No. 2.

2. Apprehending arrest in connection with the **Dhing P.S. Case No. 170/2023**, under Sections 376/511 of the IPC read with Section 8 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Amir Hussain** 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 Nur Nehar Begum, on 12.09.2023. The essence of allegation made in the FIR is that on 12.09.2023, at about 10 am, her minor daughter Smti 'X' (name withheld), aged 8 years, reported her that one Amir Hussain called her to the bank of the pond, situated at the backside of her house, and gave her a sum of Rs. 10/- and asked her to do indecent work with him and also asked her to open her half pant and then she managed to fled away.

4. Mr. Laskar, learned counsel for the applicant submits that from a bare perusal of the FIR, no offence under Section 7 punishable under Section 8 of the POCSO Act can be said to be made out. Mr. Laskar further submits that some of the villagers have lodged one case against the mother of the victim girl, on 26.08.2023, and the present FIR is the counter blast of that FIR. Mr. Laskar also submits that the applicant is innocent and no way involved with the offence alleged in the FIR and that he is ready to cooperate with the investigating agency and therefore it is contended to allow the petition.

5. On the other hand, by producing the Case Diary before this Court, Mr. Sarma, learned Additional Public Prosecutor submits that the IO has

collected sufficient incriminating materials against the applicant and therefore, it is contended to dismiss the petition.

6. Whereas, Ms. Hayat, learned counsel for the respondent No. 2 referring to the objection petition filed by her, submits that at the relevant point of time the victim girl was 8 years old. Ms. Hayat further submits that the offences are serious in nature and therefore, it is contended to dismiss the petition. In support of her submission she has also referred one decision of Hon'ble Supreme Court in the case of **Sumitha Pradeep vs. Arun Kumar C.K. & Anr.**, in **Criminal Appeal No. 1834/2022**.

7. 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 of learned Additional Public Prosecutor.

8. It is to be noted here that the IO has got the statement of the victim girl, recorded through the Magistrate, under Section 164 of the Cr.P.C. and the same is available in the case diary and it appears that in her said statement she has clearly implicated the applicant with the offence alleged in the FIR. Further, it appears from the case diary that at the relevant point of time the victim girl was only 8 years old, and that the IO has collected sufficient incriminating materials, in support of the allegation made in the FIR, against the applicant and investigation is still going on.

9. Having considered above and also considering the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant.

- 10.** Accordingly, this AB stands dismissed.
- 11.** The case diary be returned.

Comparing Assistant

JUDGE