

GAHC010290662023



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

Case No. : AB/4306/2023

ABDUL MALEK
S/O- LATE ABDUL JABBAR, R/O- VILL.- TELIACHAPARI TUP, P.S.
RUPAHIHAT, DIST. NAGAON, ASSAM, PIN- 782125.

VERSUS

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

2:NUR MAHAMMAD
S/O- ABDUL HASIM
R/O- VILL.- TELIACHAPARI TUP
P.S. RUPAHIHAT
DIST. NAGAON
ASSAM
PIN- 782125

Advocate for the Petitioner : MR A N IQBAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

05.02.2024

Heard Mr. A.N. Iqbal, learned counsel for the applicant. Also heard Ms. N. Das,

learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1 and Mr. R. Islam, learned counsel for the respondent No.2.

2. This application, under Section 438 Cr.P.C. is preferred by the applicant, namely, Abdul Malek, who has been apprehending arrest in connection with Rupahihat P.S. Case No.414/2023, under Section 376/212/506/34 IPC, read with Section 4 of the POCSO Act, 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 Nur Mahammad on 04.10.2023. The essence of allegation made in the aforesaid FIR is that on 25.08.2023, at about 4:00 p.m. in the afternoon, the accused Abdul Malek called his daughter Smt. X (name withheld), aged 17 years and while his daughter was sweeping in the house of the accused, then he committed sexual intercourse upon her. Thereafter, the victim girl has reported the matter to him and then he reported the matter to the family members of the accused Abdul Malek, namely, Abdul Hasim, Nur Jamal, Jaidul Islam, Maidul Islam and Ashad and they threatened and harassed not to lodge any case.

4. Mr. Iqbal, learned counsel for the applicant submits that the applicant is the own uncle of the informant and grandfather of the victim girl and that no such incident has alleged in the FIR has ever taken place and the case was lodged upon misunderstanding and to that effect the informant had filed one affidavit stating she has no objection in the event of granting the privilege of pre-arrest bail to the applicant and 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, Ms. N. Das, learned Additional Public Prosecutor has produced the case diary before this Court and referring to the statement of the victim girl recorded under Section 164 Cr.P.C., submits that the victim girl has implicated the applicant with the offence alleged in the FIR and therefore, Ms. Das has opposed the petition.

6. On the other hand, Mr. Islam, learned counsel for the respondent No.2 submits that

the respondent No.2 has no objection in the event of granting the privilege of pre-arrest bail to the applicant.

7. 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 Ms. Das, learned Additional P.P.

8. In view of the materials collected so far in the case diary specially the statement of the victim girl recorded under Section 161 as well as 164 Cr.P.C. and also the stage of investigation and also considering the fact that the victim and the informant are being threatened by the applicant and his family members, 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. Accordingly, the petition stands dismissed.

9. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant