

GAHC010291202023



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

Case No. : AB/4316/2023

LONKI PHANGCHO @ RAIKOM
S/O HEMCHANDRA PHANGSO
R/O VILL- BITHI APHANG, P.O., P.S. DIPHU, DIST.KARBI ANGLONG,
ASSAM, PIN-782450

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:SMTI. CHANDI PHURAPI
W/O SRI SING HANSE
R/O VILL- TENGKERLANGSO
P.S. BAITHALANGSO
DIST. WEST KARBI ANGLONG
ASSA

Advocate for the Petitioner : MR B DEURI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

05.03.2024

Heard Mr. P. Bordoloi, learned counsel for the applicant and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with the **Baithalangso P.S. Case No. 78/2023**, under Sections 328/376(3) of the IPC read with Sections 4/6 of the POCSO Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant namely, **Sri Lonki Phangcho @ Raikom** 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 Chandi Phurapi, on 09.12.2023. The essence of allegation made in the FIR is that the informant kept her daughter Smti 'X' (name withheld), in the house of Lonki Phangcho @ Raikom for last 1 year, for pursuing her studies. Later on, she came to know that in absence of the wife of Lonki Phangcho, he forced her daughter to consume liquor and used to commit rape upon her.

4. It is to be noted here that Mr. Barua, learned Addl. P.P. submits that the applicant has to satisfy this Court, in respect of the maintainability of this petition, as there is a bar under Section 438(4) of the Cr.P.C., as the victim is below 16 years. Mr. Barua further submits that the IO has collected sufficient incriminating materials against the applicant and therefore, it is contended to dismiss the petition.

5. On the other hand, Mr. Bordoloi, learned counsel for the applicant referring to a decision of Kerala High Court, in Bail Application No. 2817/2023, dated 07.06.2023, submits that in appropriate cases the court may entertain the petition, under Section 438 of the Cr.P.C., if material produced before the court would not attract the offence mentioned therein.

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 of

learned Additional Public Prosecutor.

7. It appears from the case diary that during the investigation the IO has collected the birth certificate of the victim girl and the same indicates that the date of birth of the victim girl is 15.10.2011, and as such, the victim girl was below 16 years, at the relevant date of occurrence. Further, it appears that the victim girl in the statement under Section 164 of the Cr.P.C. has implicated the applicant with the offence alleged in the FIR.

8. 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., this Court is of the view that prima-facie materials are available against the applicant, under Sections 328/376(3) of the IPC read with Sections 4/6 of the POCSO Act.

9. Accordingly, this Court is of the considered opinion that this anticipatory bail application is not maintainable, in view of the bar of Section 438(4) of the Cr.P.C. and therefore, the same is dismissed.

10. The case diary be returned.

JUDGE

Comparing Assistant