

GAHC010295472023



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

Case No. : AB/10/2024

AMIRUL ISLAM @ ANIRUL ISLAM
S/O LATE BOKTOZAMAL SK, VILL- BORTILA, P.O.-KHOPATI, P.S.-
SUKCHAR, DIST-SOUTH SALMARA MANKACHAR, ASSAM, PIN-783128

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MST. KAMOLA KHATUN
W/O JOLIMUDDIN
VILL-TELDHALA
P.O.-BORKONA
P.S.-MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. M ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 09-01-2024

1. Heard Mr. M. Islam, learned counsel for the petitioner.
2. The petitioner Amirul Islam @ Anirul Islam has filed this application under Section 438 Cr.PC, with prayer for pre-arrest bail, as he is apprehending arrest in connection with Sukchar PS Case No. 238/2023 registered under Sections 9/10/11 of the Prohibition of Child Marriage Act read with Section 6/17 of the Protection of Children from Sexual Offences Act, 2012.
3. Heard Mr. M.P. Goswami, learned Additional Public Prosecutor for the State of Assam and Mr. M. Ahmed, learned counsel for the respondent No. 2.
4. It is submitted that the respondent No. 2 is arrayed relying on the judgment of this Court in *Dipak Nayak v. State of Assam* in Criminal Appeal (JJ) No. 40/2022. The informant was not arrayed as respondent.
5. I have considered the submissions at the Bar with circumspection.
6. It is submitted that this case is not under the POCSO Act as the victim was married to the petitioner on 06.08.2023. It is also submitted that the birth certificate of the victim reflects that the victim's date of birth is 04.02.2006 and she was married at the age of 17 years 6 months 2 days, at the verge of her attainment of majority. This is a case under the prohibition of Child Marriage Act and not a case under the POCSO Act. There is no allegation of any sexual assault against the present petitioner. The petitioner has also relied on the order dated 12.04.2023 of a co-ordinate Bench of this Court in AB 1348/2023 where in a similar circumstance, petitioner was granted anticipatory bail.
7. I have also considered the submissions at the Bar that custodial interrogation may not be required considering the peculiar and unique nature of this case.
8. Considering all aspects and in view of my foregoing discussions, petition is allowed. In the event of his arrest the petitioner shall be enlarged on the bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the arresting authority under the condition that the petitioner shall appear before the IO within 10 (ten) days and co-operate with the investigation.

JUDGE

Comparing Assistant