

THE HIGH COURT OF TRIPURA

AGARTALA

Bail Appln. No. 83 of 2015

Accused (In Custody):

Md. Anowar Hossain Maishan,
S/o. Late Khalek Maisan, resident of village,
PO and PS Sonamura, District: Sepahijala.

Petitioner:

For and on behalf of the Accused above named.

Md. Safiquel Islam Maishan
S/o. Late Khalek Maisan, Resident of
village, P.O and P.S Sonamura, District:
Sepahijala.

By Advocates :

Mr. A. K. Bhowmik, Sr. Adv.
Mr. R. Dutta, Adv.

Respondent :

The State of Tripura,
Represented by the Secretary, Home
Department, Government of Tripura,
Agartala.

By Advocate :

Mr. R. C. Debnath, Addl. P.P.

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **31st August, 2015.**

Date of Order : **7th September, 2015.**

Whether fit for reporting :

Yes	No
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This application for grant of bail has been filed by the petitioner, Md. Safiquel Islam Maishan on behalf of the accused, Md. Anowar Hossain Maishan, (hereinafter called as the accused) in respect of Sonamura P.S Case No.23/2015 registered against the accused under

Section 366A/376(2)(i)/506/120B of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

[2] The FIR in question was lodged on 24.02.2015 by the mother of the victim. In this case, it was alleged that the victim is a student of Class-VI aged about 12 years. According to the complainant on 28.01.2015 when the victim was going to school the accused with the help of driver forcibly took the victim to the house of his relative in Sonamura where he forcibly solemnized marriage with her and also raped her.

[3] I have heard Sri A. K. Bhowmik, learned Sr. counsel for the accused. It is submitted that the occurrence is stated to have taken place on 28.01.2015 but the complaint was lodged only on 25.2.2015 and furthermore it was alleged that there are many discrepancies and contradictions in the statements of the witnesses. Earlier the accused had filed bail application No. 46 of 2015. This application was dismissed by this Court but liberty was granted to the accused to file a fresh bail application after the statement of a victim, her mother, the school teacher and Bachhu Miah were recorded. According to Sri Bhowmik, learned Sr. counsel the Public Prosecutor has stated that he does not want to record the statement of Bachhu Miah and the statements of other three witnesses have been recorded.

[4] I have gone through the statements and I find that the victim has made very clear cut statement that she was kidnapped, forcibly married and raped by the accused. There may be some contradictions in the statement, but this contradiction, if any, would at the best show that she

was a consenting party. However, a girl of 12 years is not legally entitled to give consent.

[5] Sri Bhowmik disputes the age of the victim. At this stage, it is not possible to determine the age of the victim but after going through the entire record I am clearly of the view that it cannot be said with certainty that the accused is not guilty of the offences with which he is charged. This Court is not going into the merits of the case, but on a careful perusal of the statement of the victim, her mother and the school teacher there is definitely some evidence against the accused. Therefore, I find no merit in the bail application, which is accordingly dismissed.

[6] It is made clear that these observations have been made only for the purpose of deciding the bail application and the learned trial Court while deciding the case on merits shall not be influenced by any of the observations made hereinabove and shall decide the case strictly in accordance with law.

CHIEF JUSTICE