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

Case No. : AB/2289/2026

BHASKAR JYOTI DEKA @ BHASKAR DEKA
S/O HUKLESWAR DEKA, R/O AZARBARI, P.S. DHARAMTUL, DIST.- MORIGAON, ASSAM

VERSUS

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

2:NABAJYOTI DEKA
S/O LATE BISHNU DEKA
VILL.- AZARBARI
P.S.- DHARAMTUL
DIST.- MORIGAON
ASSAM
PIN-78210

Advocate for the Petitioner : MR. A AHMED, MR A AHMED,U U KHAN,MISS. P M AHMED,MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM, MS. N CHOUDHURY(AMICUS CURIAE, R2)

-BEFORE-

HON'BLE MR. JUSTICE ANJAN MONI KALITA

JUDGMENT & ORDER (CAV)

25.11.2026

Heard Mr. A. Ahmed, learned counsel appearing for the accused

applicant and also heard Mr. P. Borthakur, learned Addl. PP for the State of Assam as well as Ms. N. Choudhury, learned Amicus Curiae for respondent No. 2.

2. This Court is also assisted by Mr. Z. Kamar, learned Senior Counsel assisted by Mr. P. D. Choudhury, learned Amicus Curiae along with Mr. S. Nawaz, learned Amicus Curiae in the instant case.

3. This is an application under Section 482 of the BNSS, 2023 praying for granting pre-arrest bail to the accused applicant in connection with Dharmatul P.S. Case No. 48/2026 registered under Section 65 (1) of the BNS, 2023 read with Section 6 of the POCSO Act, 2012.

4. The prosecution story, in brief, is that one Nabajyoti Deka lodged an FIR on 21.08.2026 before the Officer-in-Charge of Dharamtul Police Station alleging *inter alia* that the accused person who is the elder brother of his wife and on 14.08.2026, the wife of the accused person called his minor daughter to their house. It is alleged that the victim girl went to the house of the accused person and stayed there overnight with her maternal aunt. It is further alleged that while the victim girl was sleeping there, the accused person sprayed some substance on her face and thereby causing her to become unconscious. Thereafter, the accused person forcibly committed rape upon the victim girl.

5. On receipt of the FIR, the police registered Dharmatul P.S. Case No. 205/2026 under the aforementioned Sections.

6. A preliminary objection has been raised by the learned Addl. PP as well as Ms. N. Choudhury, learned Amicus Curiae by stating that Section 482 (4) specifically bars the entertainment of any application under Section 482 (4) of BNSS, 2023 for Anticipatory Bail regarding a person accused of Section 65 of the BNS, 2023. They submitted that since there is a statutory bar in application under Section 482 BNSS, 2023 regarding filing of an anticipatory bail application by an accused, accused of committing offence under Section 65 of the BNS, 2023, therefore, the instant anticipatory bail application cannot be entertained by this Court and the same is to be rejected at the threshold.

7. Mr. A. Ahmed, learned counsel appearing for the accused applicant, however, submits that there is no bar at the threshold in entertaining an application under Section 482, BNSS, 2023 rather the Court is required to look into the *prima facie* materials whether any offence has been made out or not. He submits that on being *prima facie* satisfied about the allegations made in the FIR, if the Court is satisfied then only the bar comes into play and anticipatory bail application under Section 482 of the BNSS, 2023 shall be rejected.

8. While hearing the issue, this Court felt that the issue is of immense important as the bar under Section 482 (4) of BNSS, 2023 may have an effect that the personal liberty of a person may be curtailed at the threshold in the event of none consideration of the application under Section 482 BNSS, 2023 at the threshold. Accordingly, this Court has

appointed Mr. Z. Kamar, learned Senior Counsel as well as Mr. S. Nawaz, the learned counsel to assist the Court as Amici Curiae.

9. Mr. A. Ahmed, the learned counsel appearing for the accused applicant submits that the Hon'ble Supreme Court in a similar issue regarding bar under Section 18 of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act of 1989) on grant of anticipatory bail under Section 438 Cr.P.C. in respect of offences under the Act of 1989 held that the bar is not absolute and the Court is permitted to look into the facts to convince itself about prima facie materials as to whether any offence under the aforesaid Act of 1989 has been made out or not. He submits that the Hon'ble Supreme Court subsequently in couple of other matters also came to a finding that the bar contained in Section 18 of the aforesaid Act of 1989 which is pari-materia to section 482 (4) of the BNSS is not absolute and there is a window to look into the materials to prima facie satisfy the Court about the presence of the foundational facts. In this connection, he refers to the case of ***Prathvi Raj Chauhan****-vs-****Union of India and Others***; reported in (***2020) 4 SCC 727***. He further submits that the Hon'ble Gauhati High Court in the case of ***Nazirhussain and Others***-vs- ***State of Assam***; reported in ***2025 SCC OnLine Gau 2971*** entertained an anticipatory bail application filed under Section 482 of the BNSS 2023, wherein, the same issue has been raised, i.e., whether an anticipatory bail application shall lie under Section 482 of the BNSS, 2023 of an accused of an offence under Section 65 BNS, 2023. He submits that though the core issue was whether the embargo of Section 482 (4) would apply to any case involving the

arrest of any person or accusation of committing an offence under Section 65 and Sub-section 2 of Section 70 in section 482 (4) of BNSS shall be read as 'or', it will be 'and' as appears in Section 482 (4) of BNSS, 2023. He submits that in that case, the Hon'ble Single Judge held that the word 'and' appearing between the words 'under Section 65 and sub-section 2 of section 70' in section 482 (4) shall have to be read as 'or' to give effect to the manifest intention of the legislation. He submits that after holding that it shall be read as 'or' in section 482 (4) of BNSS, 2023, the Hon'ble Court to look into the prima facie materials to consider the anticipatory bail application and thereafter, having found prima facie materials against the accused applicant of an offence under Section 65 of BNS, 2023, the aforesaid anticipatory bail application was rejected. Therefore, he submits that the bar under Section 482 (4) of BNSS, 2023 regarding anticipatory bail of a person accused of offence under Section 65 BNS or Section 70 (2) of BNS is not absolute and the Court is required to look into the materials available, to prima facie find out whether the facts are present to reject an anticipatory bail application under Section 482 (4) of BNSS, 2023. In this connection, he has also referred to the case of ***XXX***-vs-***State of Kerala and Others*** (BA 144/2023) decided by the Kerala High Court on 20.09.2023. He has also referred to the case of ***Kasif Sahabuddin Khan***-vs ***State of Maharashtra*** [Criminal Application (ABA) No. 794 of 2026) along with Criminal Application (ABA) No. 771 of 2026] decided by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench on 06.10.2026***.***

10. The learned Addl. PP, on the other hand, submits that Legislature has

enacted section 482 (4) BNSS, 2023 with a specific purpose to bar anticipatory bail in connection with certain category of offences. He submits that the clause is unambiguous, therefore, further interpretation of the section is not called for. He submits that the legislative intent being very clear, further judicial interpretation in the instant case is not required. He submits that the instant anticipatory bail application should be rejected at the threshold as the Court is without having any jurisdiction to entertain the same.

11. Ms. N. Choudhury, learned Amicus Curiae has supported the submissions made by the learned Addl. PP and submits that Parliament has taken away the jurisdiction of the Court in entertaining an anticipatory bail application of a person, accused of an offence under Section 65 and Section 70 (2) of the BNS. Therefore, this Court should refrain itself from entertaining the instant anticipatory bail application. In this connection, she has referred to the case of ***Dhanraj Aswami***-vs-***Amar S. Mulchandani and Ors***; reported in ***(2024) 10 SCC 336***.

12. Mr. Z. Kamar, learned Senior Counsel appearing as Amicus Curiae is also of the opinion that the bar under Section 482 (4) of the BNSS, 2023 regarding offence under Section 65 and 70 (2) of the BNS, 2023, is absolute, therefore, there is no question of entertaining any application under Section 482 (4) of the BNSS, 2023 when any accused is accused of committing an offence under Section 65 or Section 70 (2) of the BNS, 2023. He submits that legislature in it's wisdom created the bar for certain specific kind of offences with an unambiguous language and therefore, the

Court should refrain to give any other interpretation to the unambiguous language which is available in section 482 (4) of the BNSS, 2023. He submits that the clause starts with the word 'nothing' which itself shows that the intention of the legislature is clear and without any cloud about the applicability of section 482 (4) of BNSS, 2023 in case of a person accused of section 65 or Section 70 (2) of BNSS, 2023. He submits that it is well settled that if a statute provides a thing to be done in a particular manner than it has to be done in that manner and no other manner. In this connection, he has referred to a land mark case of ***Nazir Ahmed***-vs-***King Emperor***, reported in ***AIR 1936 PC 253***. He submits that the scheme of the Act of SC/ST Act, 1989 is totally different from the object and provision of section 65 or section 70 (2) of BNS, 2023. He submits that whereas the SC/ST Act, 1989 is a kind of welfare legislation *viz-a-viz* Section 65 or Section 70 (2) of BNS, 2023 are heinous crime committed against minor girl. He submits that the offences categorized under Section 65 and Section 70 (2) BNS, 2023 are crime against a minor which is brutal in nature and therefore, the offences under Section 65 and Section 70 (2) of BNS, 2023 are totally different from the offences under SC/ST Act, 1989. Therefore, he submits that support from the ratio laid down by the Hon'ble Supreme Court while discussing an anticipatory bail of a person accused of an offence under the SC/ST Act, 1989. Therefore, and an anticipatory bail filed under Section 482 (4) of BNSS, 2023 by a person accused of Section 65 or 70 (2) of BNS is miles apart and both cannot be equated, therefore, he submits that bar under Section 482 (4) of BNSS, 2023 relating to offences under Section 65 or 70 (2) of BNS, 2023 is absolute and at the threshold itself, Court is estopped from entertaining

the same.

13. Mr. S. Nawaz, the learned Amicus Curiae submits that the presence of the bar under Section 482 (4) of BNSS, 2023 relating to an offence under Section 65 or 70 (2) of BNS, 2023 is not in doubt, however, the bar is not absolute so that the Court is stopped from looking into prima facie materials against the accused person. He submits that the language used in section 482 (4) BNSS, 2023, i.e., 'on accusation of having committed" is an accusation and not any proof of the guilt of the person, therefore, the question remains is whether the applicant accused or not has to be made out from the facts relating to the allegations. He submits that an accusation is of an offence only if it discloses the ingredients of the offence. He submits that in absence of credible information and material facts, the accusation remains only in paper which cannot be sustained. An accusation that does not disclose the offence cannot supply the foundation of the offence. He submits that when in a case of Section 65 BNS, 2023 is cited but the facts alleged do not disclose rape of a girl by the accused, the bar cannot be attracted. The learned Amicus Curiae further submits that the Hon'ble Supreme Court has considered exactly the same question regarding bar under Section 18 of the SC/ST Act, 1989 regarding maintainability of an anticipatory bail application. He submits that in the case of ***Prathvi Raj Chauhan*** *(supra)*, the Hon'ble Supreme Court held that the bar does not apply when the complaint fails to make out a prima facie case under the Act. He further submits that similarly, in the case of ***Sajan Skaria***-vs-***State of Kerala***; reported in ***2024 SCC Online SC 2249***, the Hon'ble Supreme Court granted anticipatory bail because the

complaint and the video on which the complaint was founded, did not disclose the ingredients of the offences under the SC/ST Act, 1989. He refers to the case of ***Kiran-vs-Rajkumar Jivrag Jain*** and ***Another***, reported in ***2025 SCC OnLine SC 1886*** decided by the Hon'ble Supreme Court on the same issue, holding that prima facie materials have to be disclosed.

14. The learned Amicus Curiae has also referred to the case of ***Nazirhussain*** (supra), wherein, the Hon'ble Gauhati High Court ascertained the date of birth of the accused victim girl to ascertain whether any case under Section 65 of BNS, 2023 is made out or not. In view of the aforesaid case laws, the learned Amicus Curiae submits that the bar under Section 482 (4) BNSS, 2023 is not absolute. Though there is a bar, wherein, the Court finds prima facie materials of an offence relating to section 65 and 70 (2) of the BNS, 2023, the Court may not entertain an application under Section 482 (4) of BNSS, 2023. He submits that analogy can be safely drawn from the above referred cases of the Hon'ble Supreme Court, wherein, the Hon'ble Supreme Court had the occasions to discuss the issue in the context of the provisions under the SC/ST Act, 1989 which is almost a similar bar as under Section 482 (4) of the BNSS, 2023. He also submits that the Hon'ble Gauhati High Court as the well as the High Court of Judicature of Bombay, Nagpur Bench, have also decided to look into the prima facie materials and foundational facts rather than drawing the bar as an absolute bar.

15. This Court has heard the submissions made by the learned counsel

appearing for the respective parties as well as the learned Amicis Curiae assisting the Court. Cases referred to by the respective counsel are also considered.

16. At the very outset, it would be important to examine the issue that has come to the fore regarding maintainability of the application under Section 482 of the BNSS, 2023 in offences under Section 65 and 70 (2) of BNS, 2023 in view of the bar under Section 482 (4) of the BNSS, 2023. It may be relevant herein to refer to section 482 (4) of the BNSS, which is reproduced herein below:

> "***482 (4) "Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under Section 65 and sub-section (2) of Section 70 of the BNS,2023".***

17. From a plain reading of the aforesaid section, it is discernible that there is a bar in entertaining any application under Section 482 (4) of the BNSS, 2023 relating to an anticipatory bail filed under Section 482 of BNSS, 2023 relating to an offence under Section 65 or sub-section (2) of section 70 of the BNSS, 2023.

18. The language also seems to be quite unambiguous which usually does not require any further interpretation from a Court and the intent of the legislature seems to be clear while enacting or introducing section 482 (4) of the BNSS, 2023 in the General Criminal Procedural Laws. Section 438 (4) of the Cr.P.C. is pari-materia to Section 482 (4) of the BNSS, 2023 which was introduced by Criminal Law (Amendment) Bill, 2018. The very

purpose of inaction of a particular provision is found in the objects and reasons of such inaction. It is seen that the categories of offences in respect of which bar was provided under Section 438 (4) Cr.P.C. remains the same in section 482 (4) of BNSS, 2023. Section 438 (4) of Cr.P.C. was introduced by Bill No. 126/2018, i.e., Criminal Law (Amendment) Bill, 2018, wherein, the statement of objects and reasons have been mentioned as follows:-

> "***Recent incident of rape and gang rape on woman under the age of 16 years and 12 years have shaken the concise of the entire nation. Therefore, the offences of rape and gang rape of woman under the age of 16 years and 12 years are required effective deterrence through legal provision of more stringent punishment. Some of the incident in recent years have been marked by increased brutality and violence perpetuated on the minor girls. This has become a demand from various sections of society to make the penal provisions more stringent and effective, immediate arrest of the accused and to ensure speedy trial in such cases".***

From the above objects and reasons, it is very clear that the legislature with certain purpose, especially, for the purpose of effective deterrence, more stringent provisions regarding offences of rape against the minor and woman have been brought in. It also emphasized on the fact that more stringent and effective penal provisions are necessary to curtail such offences. It also underlines immediate arrest of the accused to ensure speedy trial in such cases.

19. Section 482 (4) of the BNSS, 2023 is available in General Criminal Procedural Law which provides for a bar in entertaining an anticipatory

bail application under Section 482 (4) of the BNSS, 2023 in respect of offences under Section 65 (rape in aggravated cases, i.e. on a woman under 16 years or under 12 years of age). It also bars in an offence under Section 70 (2) relates to gang rape on a woman under 18 years of age.

20. Now, coming to the question whether the bar is absolute due to the unambiguous statutory text? Section 482 (4), 2023 begins with non obstante clause exclusively mandates by use of the word 'nothing', and, since language is unambiguous, it looks like the section completely bars the jurisdiction of the Courts under Section 482, BNSS, 2023 relating to the aforesaid 2 (two) offences. Usually, when the language is unambiguous, there is no occasion for the Court to bring in any interpretation. However, taking into account of the ratios laid down by the Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan*** and ***Kiran*** (supra), wherein, on the similar issue, the Hon'ble Supreme Court has come to a clear finding that the bar under Section 18 of the SC/ST Act, 1989, wherein, the same language has been applied by the legislature, it is required to be tested whether the bar is absolute in Section 482 (4) BNSS, 2023. One important aspect is that the validity of section 18 of SC/ST Act, 1989 was earlier challenged in the Supreme Court in the case of ***State of Madhya Pradesh-vs-Ramkrishna Balodiya***; reported in ***1995 3 SCC 321***, wherein, the Hon'ble Supreme Court came to a finding that section 18 of the said Act cannot be considered as a violative of Article 14 and 21 of the Constitution of India. Thereafter, in the case of ***Dr. Subhash Kashinath Mahajan*** –vs- ***State of Maharashtra & Anr;*** reported in ***2018 6 SCC 454*** while quashing the proceeding instituted

against the appellant therein under the provisions of the Act of 1989, the Hon'ble Supreme Court issued certain directions after considering the issues relating to false implications of innocent persons. The Parliament, thereafter, took notice of the aforesaid directions and certain amendments in the Act of 1989, vide SC/ST (Prevention of Atrocities) Amendment Act, 2018 was brought in, wherein, section 18 (A) was introduced. It is also seen that the provisions of section 18 (A) of the Act, 1989 were challenged in the case of ***Prathvi Raj Chauhan*** (supra), wherein, a 3 (three) Judges Bench of the Hon'ble Supreme Court, observed that the provisions of 438 Cr.P.C. shall not apply to the cases under the SC/ST Act, 1989. It further observed that, however, if the complaint does not make out a prima facie case for applicability of Act, 1989, the bar created by section 18 (A) (i) shall not apply. The observation also emphasized that while considering an application seeking pre-arrest bail, the High Court has to balance two interests, i.e., the power is not so used as to convert jurisdiction into that under Section 438 Cr.P.C., but that is used sparingly and such order is made in very exceptional cases where no prima facie offence is made out from the FIR, and further, if such orders are not made in those classes of cases, the result would invariably be a miscarriage of justice or abuse of the process of law.

21. From the above, it is seen that the Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan*** (supra) taking into consideration the scheme and scope of SC/ST Act, 1989 as well as other precedents of Hon'ble Supreme Court, came to a finding that the bar under Section 18 of SC/ST Act, 1989 cannot be treated as an absolute bar, however, the

same has to be considered taking into account the materials available and a prima facie case against the accused person.

22. The BNSS, 2023 retains the same language in Section 482 (4) as it was available in Section 438 (4) Cr.P.C. A point to be noted is that introduction of Section 482 (4), BNSS, 2023 came after the pronouncement of the judgment by the Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan*** (supra). Therefore, a presumption can be drawn that the legislature was aware of the pronouncement of the Judgment of Hon'ble Supreme Court and thereafter, introduced the provision under Section 482 (4) and kept the language same as was available in section 438 Cr.P.C. without any alteration. In the case of ***Prathvi Raj Chauhan (supra),*** the Hon'ble Supreme Court even while upholding the validity of section 18 (A) of the Act, 1989, observed that if the complaint does not make out a prima facie case for applicability of the provisions of the Act, 1989 than the bar created by section 18 and 18 (A) shall not apply and the Court would not be precluded from grant of pre-arrest bail to the accused person.

23. In this connection, the case of ***Vilas Pandurang Pawar & Anr.*** *-vs-* ***State of Maharashtra & Ors***; reported in ***2012 8 SCC 795*** can be also be referred to. In that case also, the specific issue framed and answered by the Hon'ble Supreme Court was whether an accused charged for various offences under the IPC along with the offences under the Act, 1989 would be entitled for an anticipatory bail under Section 438 Cr.P.C. It was also observed that although section 18 of the Act, 1989 creates a bar

for invoking section 438 Cr.P.C. yet, the Courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was held that while considering the anticipatory bail, the scope for appreciation of evidence and other materials is limited and the Courts are not expected to undertake an intricate evidentiary enquiry on the materials on records. In that context, the Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan*** (supra) has analyzed the aspect of arrest by the Police. Accordingly, it was held that an arrest can be effected if there is a reasonable complaint, credible information or reasonable suspicion and the Police Officer has reason to believe that such offence has been committed by the accused person and the arrest is necessary. The Police officer is required to have 'reasons to believe' based on the information, he has received that the accused person has committed the alleged 'offence'. Paragraph-46 of the aforesaid case being relevant is quoted hereinbelow"

> "***46. The aforesaid discussions indicate that the term 'arrest' appearing in the text of section 18 of the Act, 1989 should be construed and understood in the larger context of the powers of the Police to effect an arrest and the restrictions imposed by the statute and the Courts on the exercise of such power. Seen thus, it can be said that the bar under Section 18 of the Act, 1989 will apply only to those cases where prima facie materials exist pointing towards the commission of an offence under the Act, 1989. We say so because it is only when prima facie is made out and that pre-arrest requirements as stipulated under section 41 of Cr.P.C. would be said to be satisfied".***

24. Therefore, the Hon'ble Supreme Court emphasized on presence of prima facie materials, only then, Police arrests a person. Therefore, there cannot be a second view that without having any materials relating to alleged offence and materials for reasons to believe that a prima facie offence has been committed, then only, an arrest is possible. So, without having foundational facts of prima facie commission of an offence, a liberty of a person cannot be curtailed. The Hon'ble Supreme Court has also stressed on the duty to determine prima facie existence of the case casts upon the Courts with a view to ensure that no unnecessary humiliation is caused to the accused. The Hon'ble Supreme Court is of the view that Courts should not shy away from conducting a preliminary enquiry to determine if the narration of the facts in the complaint/FIR, in fact, discloses the essential ingredients required to constitute an offence under the Act, 1989. It is expected of the Courts to apply their judicial mind to determine whether the allegations leveled in a complaint, on a plain reading, satisfies the ingredients in the alleged offence.

25. It is held that the aforesaid role of the Courts, assumes even more importance, when a prima facie finding on the case would effect the accused persons from seeking anticipatory bail which is an important concomitant of the personal liberty of the individual.

26. In the case of ***Kiran*** (supra), the Hon'ble Supreme Court cancelled the anticipatory bail granted by the High Court as the Hon'ble Supreme Court found that the bar under Section 18, though absolute in terms, applies with a rider, i.e., where accusation is devoid of prima facie merit,

the Court may grant anticipatory bail. The Hon'ble Supreme Court observed that absence of prima facie case, however, must appear in the first blast of the averments in the FIR, contents of which are decisive. However, the Hon'ble Supreme Court cautioned the Courts not to hold a mini trial, as the Hon'ble Supreme Court found that the High Court erred in weighing the statements of the witnesses and discrepancies while considering the anticipatory bail.

27. From the above, it is discernable that though a mini trial going in depth into the materials is not required while considering an anticipatory bail in an offence under the SC/ST Act, 1989, the Court can, however, look into the primary documents that are available before the Court which includes the FIR. Therefore, a reading of the FIR or complaint must disclose the ingredients of the offence alleged under the aforesaid Act of 1989**.**

28. Taking into account the discussions made above, this Court is of the opinion that the language of Section 482 (4), BNSS, 2023 is very clear and therefore, further discussions on the interpretation of the statutes is not required in the instant case. It is clear that there is a bar in entertaining an anticipatory bail application under Section 482 (4) BNSS, 2023 against an offence under Section 65 or section 70(2) of BNS, 2023, however, the case has to be considered taking into account the observations of the Hon'ble Supreme Court in the similar issue under the Act of 1989 in the above mentioned cases, though, the scheme of the SC /ST Act, 1989 is different and reasons and objects behind the same are also different than

section 482 (4) of the BNSS, 2023, the provisions being of similar in nature, both being stringent, having capacity of curtailing personal liberty of a person. Therefore, the findings of the Hon'ble Supreme Court under the SC/ST Act, 1989 becomes relevant in the present case also.

29. Section 482 (4) of the BNSS, 2023 bars anticipatory bail for offences under Section 65 and Section 70 (2) of the BNSS, 2023. These are the special categories of crime involving rape where the victim is under 16 years or under 12 years in respect of Section 65 whereas 18 years in respect of Section 70 (2), 18 years involving a gang rape. This Court has already discussed that those provisions were brought in for protection of minors and immediate relief for the victims. There is no doubt that these two categories fall under the heinous crime which are, in fact, a crime not only against the victims, also against the entire human kind and the society as a whole. The offence, in addition, to the physical torture and harassment, degrades and humiliates the victim which no words can explain. More so, the victims are minors without having adequate maturity to understand the consequences on their lives. The crime leaves lasting effects on the victims which ultimately affects the development of future lives of the victims. Therefore, the objects and reasons for introduction of section 482 (4) of the BNSS, 2023 finds validity and there is every justification that such victim should be provided the justice at the earliest. It is also true that the same is possible only when the accused person is arrested or brought to the trial at the earliest. Therefore, considering the kind of offence involved in minors who has been harmed bodily and mentally, exclusion of the provision of pre-arrest bail in cases, wherein,

prima facie materials are available seems to be very genuine and appropriate. However, the society has been witnessing many cases where the provisions of law have been misused and misutilized by many for various reasons. There are many cases where it has been found that false allegations, motivated allegations and wrong aspirations have been made thereby, alleging innocent persons of committing rape and sexual abuse. It is also seen that though there is a presumption under the POCSO Act about statement of victims, there are various cases, wherein, false allegations have been made only to invoke the provisions of the POCSO Act where the provisions and punishments are very stringent. This Court refrains from discussing or commenting on those false cases, however, it can certainly be observed that such false cases are occurring which have the potentials of crippling a person's whole life due to such false allegations.

30. Though, anticipatory bail is not a fundamental right but a statutory remedy. From the above discussions, this can be safely held that due to false and concocted allegations, a person cannot be allowed to be deprived of his statutory remedy. A wrong debarment of the statutory remedy can potentially affect the personal liberty of a person guaranteed under Article 21 of the Constitution of India. Personal liberty under Article 21 of the Constitution of India being the fundamental right of citizens of India, the same cannot be taken away only on the basis of false or motivated allegations without the foundational facts.

31. The legislature is mandated to enact laws which hold the right of life

and liberty guaranteed under Article 21 of the Constitution of India, therefore, it is not expected that the legislature will enact something which shall take away the right without valid reasons. Therefore, it is very much necessary to find out the foundational facts, i.e., if there are prima facie materials about the alleged offence against the accused person are present or not. Also to find out if the foundational facts on the basis of which allegations have been made are correct or not. This does not mean that the Court should go deeper into the evidence in the case or look into the case to find out the details of the allegations, rather, it should be the primary facts and from a reading of the primary documents, the Court should satisfy itself of having the prima facie materials for the offences alleged. The Court cannot close it's eyes to certain false and concocted allegations without having any prima facie materials and thereby, not entertaining the anticipatory bail application. If the foundational facts about the allegations are present, then of course, the Court shall not entertain the anticipatory bail application. But in a case, wherein, no foundational facts are available regarding the allegations, the Court shall be at its jurisdictional discretion, to grant anticipatory bail in relevant cases.

32. Now, coming back to the facts of the instant case, it is seen that the FIR has been lodged by the father of the minor girl who is 13 years of age who has been allegedly raped by a close relative of the minor girl. Nothing has been brought on record by the accused applicant to show that the allegations are patently incorrect. No foundational facts are prima facie found to be disputed by the accused applicant except the denial by the

accused applicant. Other than the statement regarding some altercation between the informant and the accused applicant, due to which the case has been falsely filed by the informant, nothing has been stated or brought on record. It is neither the case of the accused applicant that the girl was not a minor nor the fact that the girl did not visit the house of the accused applicant on that night. It is also seen that FIR was lodged soon after the alleged incident of rape, without any delay. No reliable materials have been brought in to rebut any of the allegations against the accused applicant in the instant case. Therefore, this Court is of the considered view that prima facie materials are available against the accused applicant relating to the allegations against the accused applicant in the instant case. Accordingly, it is held that Section 482 (4) of BNSS, 2023 shall be applicable in the instant case.

33. Accordingly, considering the gravity of the offence and since the stage of investigation is at a very nascent stage, the bar provided under Section 482 (4) of BNSS, 2023 shall be applicable in the instant case and therefore, instant anticipatory bail is barred by section 482 (4) of the BNSS, 2023 and accordingly, the same is rejected.

34. This Court appreciates the valuable assistance forwarded by the learned Amici Curiae, namely, Mr. Z. Kamar, the learned Senior Counsel, Mr. S. Nawaz and Ms. N. Choudhury, learned counsel, in the instant case.

In view of the aforesaid directions, this anticipatory bail application stands disposed of, as dismissed.

JUDGE

Comparing Assistant