

Abdus Sattar Ahmed vs The State Of Assam on 23 August, 2021

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Bench: Soumitra Saikia

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GAHC010091282021

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

Case No. : AB/1611/2021

ABDUS SATTAR AHMED
S/O MD. JULHASH ALI,
RESIDENT OF VILLAGE NARAVITA PT 3,
BONGAIGAON, PS ABHAYAPURI, BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

23.08.2021 Heard Mr. B. Chowdhury, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State of Assam.

2. This anticipatory bail petitioner has been filed by the petitioner namely, Abdus Satter Ahmed, apprehending arrest in connection with Kalgachia P.S. Page No.# 2/4 Case No. 99/2021 (Corresponding to G.R. Case No. 733/2021) under Sections 366A/294/34 of the IPC, read with

Sections 10/11 of Prohibition of Child Marriage Act, 2006.

3. The FIR was lodged by the informant one Abdul Raham alleging that the accused No. 1 had kidnapped his minor 14 years old daughter, Rofika Khatun while she was returning home from Lalong Higher Secondary School. It is also alleged that his minor girl was kidnapped on 25.01.2021 at about 3.00 P.M by the petitioner/accused No. 1 along with his associates. The victim girl could not be traced out but subsequently the informant has learnt that the victim has been married off to the petitioner/accused No. 1 at the instruction of accused No. 2, who is the father of the accused No. 1/petitioner.

4. The learned counsel for the petitioner submits that the entire allegations made in the FIR are false and concocted. The learned counsel for the petitioner submits that the petitioner did not kidnap informant's daughter but she on her own volition had come to the house of the petitioner as her father had forcibly made arrangements to get her married off someone else. The learned counsel for the petitioner submits that the petitioner and the daughter of the informant like each other but no marriage has been held between the petitioner and the informant's daughter. The learned counsel, therefore, submits that neither the ingredients of Sections 10 and 11 of Prohibition of Child Marriage Act nor the provisions of Section 366A of IPC are attracted. The learned counsel for the petitioner submits that the petitioner was granted interim bail by order dated 30.06.2021 and his statement was, accordingly, recorded by the Investigating Officer. He, therefore, submits that custodial interrogation of the petitioner is not required in the interest of investigation of the case.

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5. I have heard the learned counsels for the parties. The case diary has been produced and the same has been duly perused.

6. From the case diary, the statement of the daughter of the informant recorded under Section 164 Cr.P.C. is seen. In her statement, the daughter of the informant, namely Rofika khatun states that although she is in love with the petitioner for the past three (3) years, her father wanted to marry her off to someone else. On 13.02.2021 she went away to the house of Abdus Satter Ahmed, namely the petitioner, without informing anyone at her home. She stated that she stayed in the residence of Abdus Satter for about 1 1/2 months and thereafter, upon hearing that a case has been filed by her father she went away from there. She categorically denied that the petitioner had kidnapped her or that there was any physical relationship between her and the petitioner.

7. The medical examination report which was sought for could not be undertaken as the daughter of the informant, namely Rofika Khatun refused medical examination as per the medical report dated 20.02.2021. Since medical examination of the daughter of the informant was not conducted, it cannot be ascertained if the girl was exposed to any physical relationship. The girl has also been recovered and custody has been given to her legal guardian namely her father- Abdur Rahman, who is also the informant. The Birth Certificate issued by Director of Birth Certificates which is available in the case diary shows the date of birth of the daughter of the informant to be 25.12.2005, if that is so, then the age of the girl will be about 16 years and therefore, she is a minor. In her statements

under Section 164 Cr.P.C., the victim girl had stated that she spent about a month and half in the house of the petitioner. However, since medical examination was refused, it cannot be ascertained whether the victim girl was Page No.# 4/4 exposed to physical relationship with the petitioner during her stay with him as stated by the victim girl in her 164 statement. Although, the petitioner in his statements before the police denies that he had kidnapped the victim girl, fact remains that the victim girl is a minor and she had spent about a month and half with him without any intimation to the legal guardian of the victim girl stating that the victim girl had on her own violation come to the house of the petitioner and had been staying with him for the said period.

8. Considering all of the above, this Court is of the view that since charge- sheet in the matter has not been filed and also considering the gravity of the offences alleged, the prayer for anticipatory bail cannot be allowed. The interim pre-arrest bail granted vide order dated 30.06.2021 is hereby recalled.

9. Accordingly, the anticipatory bail application stands rejected and the same is dismissed.

10. Return the case diary.

JUDGE Comparing Assistant