

GAHC010025942024



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

Case No. : AB/299/2024

INJAMUL SARKAR @ SNJAMUL SARKAR AND 4 ORS.
S/O SHAH ALOM SARKAR
R/O VILL- LAKHIMARI
P.S. GOLAKGANJ
DIST. DHUBRI, ASSAM

2: REZAUL @ REZAUL ALI SK.
S/O MONNAF ALI
R/O VILL- LAKHIMARI
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM

3: REZZAK ALI TALUKDAR @ REZZAK TALUKDAR
S/O LT.MOKTEL TALUKDAR
R/O VILL- LAKHIMARI
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM

4: SHAH ALOM SARKAR
S/O LT. KURBAN ALI SARKAR
R/O VILL- LAKHIMARI
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM

5: HASINA BIBI
W/O SHAH ALOM SARKAR
R/O VILL- LAKHIMARI
P.S. GOLAKGANJ
DIST. DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM ANR.
REP BY THE PP ASSAM

2:SALAM SK.
S/O LT. GESHOUDDIN SK
R/O WARD NO. 14
I.G. ROAD
DHUBRI

P.O. DHUBRI
P.S. AND DIST. DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. A T SARKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

21.02.2024

Heard Mr. A.T. Sarkar, learned counsel for the applicants and also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. This application, under Section 438 Cr.P.C. is preferred by five applicants, namely, Injamul Sarkar @ Anjamul Sarkar, Rezaul @ Rezaul Ali Sk, Rezzak Ali Talukdar @ Rezzak Talukdar, Shah Alom Sarkar and Hasina Bibil, who have been apprehending arrest, in connection with Dhubri P.S. Case No.25/2024, under Section 365/376 IPC, read with Section 4 of the POCSO Act, for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Salam Sk on 26.01.2024. The essence of allegation made in the

aforesaid FIR is that on 15.01.2024, at about 6:00 p.m. in the evening, one Injamul Sarkar with the help of Rezaul, Rezzak Talukdar kidnapped his daughter from I.G. Road, Dhubri, in a small vehicle and after 24 hours he recovered his daughter from the house of Injamul Sarkar.

4. Mr. Sarkar, learned counsel for the applicants, submits that with applicant No.1 the daughter of the informant had love affairs and that applicant Nos.2 and 3 are friends of the applicant No.1 and applicant Nos.4 and 5 are the parents of the applicant No.1 and that there is delay of 10 days in lodging the FIR and there is no medical report to support that the victim was being raped by the applicant No.1 and that they are ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that the I.O. has collected sufficient incriminating materials against the applicants. Referring to the statement of the victim girl recorded under Section 164 Cr.P.C., Mr. Sarma submits that the age of the victim girl at the relevant point of time was 16 years and she has implicated all the applicants and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Sarma, learned Additional P.P.

7. It is to be noted here that notice was issued to the respondent No.2 by registered post and the office note dated 20.02.2024 indicates that postal consignment tracking report has been received and the same indicates that the notice was delivered to the informant on 14.02.2024 and in spite of receiving notice, the informant chooses not to appear before this Court.

8. However, the case diary indicates that the I.O. has collected sufficient incriminating materials in support of the allegation made in the FIR. In view of the materials collected so far in the case diary, specially the statement of the victim girl recorded under Section 164 Cr.P.C. and her age, this Court is of the view that this is not a fit case where the

privilege of pre-arrest bail can be granted to the applicants and accordingly, the petition stands dismissed.

9. Case diary be returned.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant