

GAHC010288262023



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

Case No. : AB/4344/2023

MERAJUL ISLAM
S/O ABDUL HANIF
VILL- NALIPARA
PS. KAMPUR
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:MD. JANAB ALI
S/O SAMAR ALI
VILL- TUKTOKI P.S. DHING
DIST.NAGAON
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

AB/294/2024

ABUL BASAR AND ANR.
S/O ABDUL SALAM
R/O VILL- NALIPAR
P.S. KAMPUR

DIST. NAGAON
ASSAM

2: KHUSID ALOM
S/O SAFIQUL SALAM
R/O VILL- NALIPAR
P.S. KAMPUR

DIST. NAGAON
ASSAM
VERSUS

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REP. BY THE PP
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2:MD. JANAB ALI
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VILL- TUKTOKI
P.S. DHING
DIST. NAGAON
ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

13.03.2024.

Heard Shri H Ali, learned counsel for the applicant, namely, Merajul Islam in AB/4344/2023 and Shri N Uddin, learned counsel for the applicants, namely, 1. Abul Basar and 2. Khusid Alom in AB/294/2024, who have filed this anticipatory bail application under Section 438 of the Cr.PC praying for pre-arrest bail in connection with Kampur PS Case No. 125/2023 under Sections 354(B)/328/34 of the IPC, read with Section 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Initially, a common petition, being AB/2945/2023 was filed by the

applicants which, however, was rejected by this Court vide order dated 18.10.2023. Such rejection was after perusal of the Case Diary which included the statement of the alleged victim under Section 164 of the Cr.PC.

3. Shri N Uddin, learned counsel for the applicants in AB/294/2024 has submitted that there is a long and unexplained delay of 13 days in lodging the FIR which itself raises serious doubts on the veracity of the case lodged against the applicants. It is also submitted that towards their claim that they are Village Defence Party (VDP) members, certificates to that effect have also been annexed to this petition.

4. Shri H Ali, learned counsel for the applicant in AB/4344/2023 while supporting the submissions made by Shri Uddin, learned counsel, has further submitted that so far his client is concerned, there is no specific allegation to connect the applicant with the alleged offence. It is further submitted that the applicants were part of the VDP and have detected the alleged victim with two other boys and on such detection, had handed over the alleged victim to her parents and only as a counter blast, the instant FIR has been lodged.

5. Shri KK Das, learned Addl. Public Prosecutor, Assam has, at the outset, submitted that the prayer for anticipatory bail having been rejected once, unless new grounds are made out and urged, there may not be a scope even to examine such a prayer. He submits that so far as the documents in support of the contention of the applicants that they belong to the VDP, this Court in the earlier order had already taken note of the submission and had also come to a finding that even if the applicants are members of the VDP that will not absolve them from any criminal liability.

6. Be that as it may, the Case Diary produced has been carefully perused which includes the statement made by the alleged victim under Section 164 of the Cr.PC. Though there appears that there has been a delay of 13 days in lodging the FIR, the FIR itself states the reasons for such delay and in any case, in an offence under the POCSO Act, the question of delay can be a question of determination, at best in the trial and not in the stage of consideration of an application for anticipatory bail.

7. In view of the above, both the anticipatory bail applications are rejected.

8. Let the Case Diary be returned to the learned Addl. PP.

JUDGE

Comparing Assistant