

GAHC010033262024



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

Case No. : AB/386/2024

JAFAR ALI SK.
S/O LATE AJGAR ALI SK.
VILL- BILASHPUR, BAGULAMARI, P.O. BILASPUR,
P.S. AND DIST. BONGAIGAON, ASSAM

VERSUS

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

2:ASANUR SK.
(ELDER BROTHER OF VICTIM MISS EJADA BEGUM BEING MINOR)
S/O LATE REJJAK MIYA SK.
VILL- CHIKIBIKI P.O. BILASPUR
P.S. AND DIST. BONGAIGAON
ASSAM, PIN-78337

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

ORDER

04.03.2024

Heard Mr. M. Khan, learned counsel for the applicant. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1 and Mr. A. Rahman, learned counsel for the respondent No.2.

2. This application, under Section 438 Cr.P.C. is preferred by the applicant, namely, Jafar Ali Sk, who has been apprehending arrest in connection with Special (P) Case No.142(BGN)/2023, arising out of Bongaigaon P.S. Case No.61/2023, under Section 17 of the POCSO Act, read with Section 9/10 of the Prohibition of Child Marriage Act, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Khandakar Jamal of Bidyapur Police Out Post on 02.02.2023. The essence of allegation made in the aforesaid FIR is that one Anowar Hussain of Bilaspur Bagulamari got married with a girl of 16 years old of village Bilaspur Takuamari.

4. Mr. Khan, learned counsel for the applicant submits that the applicant is the father-in-law of the victim and that the allegation in the FIR is against one Anowar Hussain only, who is the son of the present applicant and he has already been granted pre-arrest bail by this Court vide order dated 16.05.2023 in AB No.1087/2023 and that he is ready to cooperate with the investigating agency and he was not aware of about the marriage of his son with the victim girl and therefore, it is contended to allow this petition.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, submits that at the relevant point of time of solemnization of the marriage, the age of the victim girl was 16 years and as such, her consent cannot be treated as a valid consent in the eye of law and therefore, Mr. Sarma has opposed the petition.

6. Whereas, Mr. Rahman, learned counsel for the victim submits that the victim is living with her husband Anowar Hussain and she has no objection in the event of allowing this application.

7. Having heard the submission of learned Advocates of 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.

8. Indisputably, the investigation of this case has already been completed and the I.O.

has submitted charge-sheet against the present applicant showing him as absconder in the charge-sheet and now the case is pending for production before the learned Court below. Since the charge-sheet has already been submitted and the learned Court below has taken cognizance of the offence, this Court is inclined to dispose of this anticipatory bail application by directing the applicant to appear before the learned Court below on or before **20.03.2024** and to apply for regular bail and in the event of filing such an application, the learned Court below shall consider the same in accordance with law.

9. In the interim, this Court is inclined to grant interim protection to the applicant till appearance before the learned Court below. Accordingly, it is provided that in the event of arrest of the applicant, namely, Jafar Ali Sk, in connection with Special (P) Case No.142(BGN)/2023, arising out of Bongaigaon P.S. Case No.61/2023, under Section 17 of the POCSO Act, read with Section 9/10 of the Prohibition of Child Marriage Act, he shall be enlarged on pre-arrest bail on his executing a bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) The applicant shall appear before the learned Court below on or before **20.03.2024**;
 - (ii) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
 - (iii) The applicant shall not leave the jurisdiction of the learned Special Judge (POCSO), Bongaigaon, without prior permission.
10. In terms of above, this anticipatory bail application stands disposed of.

**Sd/- Robin Phukan
JUDGE**

Comparing Assistant