

GAHC010048032024



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

**Case No. : AB/620/2024**

MAHIDUL ALI KHA  
S/O JAHAR ALI KHA, R/O VILL- GOROIMARI, P.S. AND DIST-BONGAIGAON,  
ASSAM, PIN NO.-783380

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ABIRUDDIN MONDAL  
S/O MANIR UDDIN  
R/O VILL- BOGURIGURI PATHAR  
P.S.-SORBHOG  
DIST- BARPETA (ASSAM)

**Advocate for the Petitioner : MR. A CHOWDHURY**

**Advocate for the Respondent : PP, ASSAM**

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

**ORDER**

**20.06.2024**

Heard Mr. S. Islam, learned counsel for the applicant and also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1 and

Mr. S. Das, learned counsel for the respondent No.2.

2. This application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Mahidul Ali Kha, who has been apprehending arrest in connection with Special POCSO Case No.16/2023, arising out of Sorbhog P.S. Case No.135/2022, under Section 366A/343/384/506/34 IPC, read with Section 4 of the POCSO 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 Abiruddin Mondal, on 12.09.2022. The essence of allegation made in the aforesaid FIR is that on 12.03.2022, at about 12:30 O'clock, while the minor daughter of the informant, Smt. X (name withheld), aged 16 years, was proceeding towards a nearby shop in order to purchase biscuit, then one Afsar Ali took her away to Nayan Bazar pretending to have a discussion with her where Mahidul Ali Kha was awaiting on the road with one Maruti car and while the informant's daughter reached near the car, then Afsar Ali and Mahidul Ali Kha forcefully put her into the car and took her to a house, situated at Howly, by gagging her mouth, where the informant's daughter was confined in the house with Mahidul Ali Kha and thereafter, Afsar Ali left the place and Mahidul Ali Kha confined his daughter for three days there and established physical relation with her against her will and after three days, Mahidul Ali Kha and Afsar Ali took the signature of the daughter of the informant on a blank stamp paper and blank white paper with a promise to marry her.

4. Mr. Islam, learned counsel for the applicant submits that upon the aforementioned FIR lodged by the informant, a case, being Sorbhog P.S. Case No.135/2022, under Section 366A/343/384/506/34 IPC, read with Section 4 of the POCSO Act has been registered and investigation was carried out and the same culminated in submission of charge-sheet against the present applicant along with another accused to stand trial in the Court under Section 366A/343/384/506/34 IPC, read with Section 4 of the POCSO Act. Mr. Islam further submits that the matter has been settled between the parties and an agreement to that effect is also executed, which is enclosed with the petition as Annexure-B at page

No.23 and that the applicant will appear before the learned Trial Court and will face the trial and therefore, it is contended to allow the petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, has vehemently opposed the petition on the ground that in the statement recorded under Section 164 Cr.P.C., the victim girl had implicated the applicant with the offence alleged in the FIR, which are serious in nature and therefore, Mr. Lahkar has opposed the petition.

6. On the other hand, Mr. S. Das, learned counsel for the respondent No.2 also vehemently opposed the petition on the ground that the applicant has already been charge-sheeted under Section 4 of the POCSO Act along with Section 366A/343/384/506/34 IPC and that given the nature of the offence, this is not a fit case where the privilege of pre-arrest bail can be extended to the applicant and therefore, it is contended to dismiss the same.

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 scanned copy of the record received from the learned Trial Court.

8. It is not in dispute that after completion of investigation the I.O. had laid charge-sheet against the present applicant under Section 366A/343/384/506/34 IPC, read with Section 4 of the POCSO Act. Further, it appears from the statement of the victim girl recorded under Section 164 Cr.P.C. that she has implicated the applicant with the offence alleged in the FIR. Further, it appears that the age of the victim girl, at the relevant point of time was 16 years.

9. Under the aforementioned facts and circumstances and also considering the submission of learned Advocates of both the parties and also considering the nature and gravity of the offence, this Court is of the considered opinion that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant and accordingly, the petition stands dismissed. The applicant shall surrender before the learned Court below forthwith.

10. In terms of above, this anticipatory bail application stands disposed of.

**Sd/- Robin Phukan**  
**JUDGE**

**Comparing Assistant**