

GAHC010002052024



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

Case No. : AB/20/2024

UMESH BASUMATARY
S/O RANU KUMAR BASUMATARY
R/O VILL- ASHRABARI
P.O. RANCHAUDHAM, DIST. CHIRANG, ASSAM-783372

VERSUS

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

2:DANSWRANG BASUMATARY
S/O LT. JIREN BASUMATARY
R/O VILL- AMGURI
P.S. KOKRAJHAR
PIN-783370'
DIST. KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : PP, ASSAM

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

ORDER

17.02.2024

Heard Mr. R.B. Gohain, learned counsel for the applicant and also heard Mr. B.

Sarma, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under Section 438 Cr.P.C. is preferred by the applicant, namely, Umesh Basumatary, who has been apprehending arrest in connection with Kokrajhar P.S. Case No.315/2023, under Section 323/342/376/427/506 IPC, read with Section 6 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 Danswrang Basumatary on 10.09.2023. The essence of allegation made in the aforesaid FIR is that on 06.09.2023, at about 7:30 p.m., the daughter of the informant Smt. X (name withheld), aged 17 years, was called by Umesh Basumatary at Titaguri to his rented room on the pretext of some works and there he confined her for 3 nights and committed rape upon her and also assaulted her and caused injuries over her person.

4. Mr. Gohain, learned counsel for the applicant submits that the applicant is innocent and he is no way involved with the offence alleged in the FIR and the case has been lodged against the applicant falsely and the statement given by the victim girl is under pressure and he is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, referring to the statement of the victim girl recorded under Section 164 Cr.P.C. and also referring to the birth certificate of the victim girl available in the case diary, submits that the date of birth of the victim girl is 17.04.2006 and in her statement under Section 164 Cr.P.C., she has categorically stated that she was confined by the applicant in his room and committed rape upon her and therefore, Mr. Sarma submits that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant and contended to dismiss the same.

6. It is to be noted here that pursuant to the order dated 08.01.2024, notice was issued to the respondent No.2 and as per office note dated 15.02.2024, notice was

delivered to the respondent No.2 on 05.02.2024 as per postal tracking report. But the respondent No.2 remained unrepresented today.

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. The case diary indicates that the I.O. has collected the birth certificate of the victim girl issued by the Director of Health Services, which reveals that date of birth of the victim girl was 17.04.2006 and the occurrence took place on 11.09.2023 and as such, on the date of occurrence the victim girl was a child, as defined in Section 2(g) 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. The offences are serious in nature and investigation is going on and at this stage it cannot be said that custodial interrogation of the applicant is not required in the interest of investigation. His custodial interrogation seems to be indispensable and therefore, 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 applicant and accordingly, the petition stands dismissed.

9. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant