

GAHC010051372024



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

Case No. : AB/754/2024

RAHMAN ALI @ RAKMAN ALI
S/O ABDUS SALAM, VILL- NO. 3 GORAIMARI, P.S.-PANBARI, DIST-
CHIRANG (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ABDUL KARIM
S/O LATE FULMAMUD
VILL- NO. 1 KAWADI
P.O.-PATILADAHA
P.S.-MANIKPUR
DIST- BONGAIGAON (ASSAM)
PIN-78339

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 10-04-2024

Heard Mr. A. Ahmed, learned counsel for the petitioner *Rahman Ali @ Rakman Ali*.

2. The petitioner has filed this application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for pre-arrest bail as he is apprehending arrest in connection with PRC Case No. 51/2024 arising out of Manikpur Police Station Case No. 144/2023 which was initially registered under Sections 363/376 of the Indian Penal Code, 1860 (IPC for short) read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

3. Heard Mr. K. Baishya, learned Additional Public Prosecutor for the respondent State.

4. It is submitted by the learned counsel for the petitioner that initially this case was registered under the POCSO Act due to the fake birth certificate submitted by the informant. This has also been reflected in the charge sheet marked as Annexure-II of the petition. Charge sheet has been submitted against the petitioner and while submitting charge sheet, the Investigating Officer had stated that although the petitioner was booked under Section 363/376 of the IPC read with Section 4 of the POCSO Act, the age of the victim was found to be above 20 (Twenty) years and so, charge sheet was laid only under Section 363/376 of the IPC. The Investigating Officer had also stated that while submitting charge sheet it was found that the birth certificate of the victim was forged and when the Investigating Officer made an enquiry, he found that the school certificate reflected the age of the victim was above 20 (Twenty) years. The X-Ray report also gives the radiological age of the victim as 19-20 years.

5. It is submitted on behalf of the petitioner that by submitting fake and forged documents, the informant for reasons best known to him, tried to entangle the petitioner in a false case under the serious offence i.e. under the POCSO Act, so that the petitioner would not be granted bail.

6. The learned Additional Public Prosecutor has submitted that the statement of the victim under Section 164 of the CrPC however reflects incriminating materials against the petitioner and anticipatory bail may not be granted to the petitioner.

7. The learned counsel for the petitioner has relied on the on the decision of Hon'ble the Supreme Court in *Bhadresh Bipinbhai Sheth Vs. State of Gujarat* reported in AIR 2015 SC 3090 wherein it has been observed:

“15. In the first place, it is necessary to remind ourselves that in the present proceedings, this Court is concerned not about the feasibility of framing of the charge under Section 376 IPC, or merit thereof but to the grant of anticipatory bail to the appellant. Therefore, the arguments of the prosecutrix that such a charge is rightly framed and the submissions on behalf of the appellant attempting to find the loopholes and the weakness in the prosecution case, would not be of much relevance to the issue involved. At this stage, it cannot be said as to whether there was any physical relationship between the appellant and the prosecutrix and, if so, whether it was consensual and, therefore, no charge of rape was made out. The fact remains that a charge of rape has been framed. It would ultimately be for the trial court to arrive at the findings as to whether such a charge stands proved or not, on the basis

of evidence that would be produced by the prosecution in support of this charge. With these preliminary remarks, we advert to the core issue, namely, whether in the circumstances of this case, appellant was entitled to anticipatory bail or not and whether the High Court was justified in cancelling the anticipatory bail.”

“23. The principles which can be culled out, for the purposes of the instant case, can be stated as under:”

“....(iv) There is no justification for reading into Section 438, Cr.P.C. the limitations mentioned in Section 437, Cr.P.C. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by

Section 438, Cr.P.C. to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail....”

“...(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:...”

“...(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail...”

9. The appellant Bhadresh Bipinbhai Sheth who was booked under Section 376 of the IPC was granted anticipatory bail by the Additional Sessions Judge which was cancelled by the High Court but the order of the Additional Sessions Judge was upheld by the Hon’ble Supreme Court.

10. Reverting back to this case, I have considered the submissions at the bar with circumspection.

11. I have considered the submissions that while submitting charge sheet the Investigating Officer has mentioned that the victim’s birth certificate has been manipulated and she was shown to be a minor. I have also considered the submission that the petitioner is willing to cooperate with the trial. Charge sheet has already been laid against the petitioner. As the petitioner is a local resident, he is not a flight risk. The merits of this case are not dealt with in connection with this bail application.

12. In the light of the decision of Hon'ble the Supreme Court in Bhadresh Bipinbhai Sheth (supra), petition is allowed.

13. In the event of his arrest, the petitioner shall be enlarged on bail on furnishing a bail bond of *Rs.50,000/- (Rupees Fifty Thousand)* with a suitable surety of like amount to the satisfaction of the learned trial Court. The learned trial Court may impose conditions to secure appearance of the petitioner, such conditions which the Court deems fit and proper.

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

JUDGE

Comparing Assistant