

GAHC010006752024



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

Case No. : AB/100/2024

ROBIUL ISLAM
SON OF LATE SOKIR UDDIN, RESIDENT OF VILLAGE- JALESWAR BILL,
P.O.- JALESWAR, P.S. LAKHIPUR, DISTRICT- GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR

2:ATAULLAH KHAN
(FATHER OF VICTIM GIRL) SON OF LATE NIZAM KHAN
RESIDENT OF LOHARPATTY PATHAR
P.O. AND P.S. DIBRUGARH
DISTRICT- DIBRUGARH
ASSAM
PIN- 78600

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

12.02.2024

Heard Mr. R. Islam, learned counsel for the applicant and also heard Mr. R.J.

Baruah, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. This application, under Section 438 Cr.P.C. is preferred by the applicant, namely, Robiul Islam, who has been apprehending arrest in connection with POCSO Case No.129/2023, arising out of Dibrugarh P.S. Case No.1605/2019, under Section 120(B)/366 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 Ataullah Khan on 23.09.2019. The essence of allegation made in the aforesaid FIR is that on that day, at about 12:30 p.m. his daughter Smt. X (name withheld), aged 14 years, was proceeding towards home from new Market and then one Robiul Islam along with Jaidul Islam @ Zahidul and Nur Hussain, kidnapped his daughter and her whereabouts is not known.

4. Mr. Islam, learned counsel for the applicant submits that after investigation of the case the I.O. has laid charge-sheet against the present applicant and that he is ready to face trial and will appear before the learned Court below on each and every date and that the learned Court below has taken cognizance of the offence against the applicant and issued summon to him and he will appear before the learned Court below and therefore, it is contended to allow the petition.

5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, referring to the materials available in the scanned copy of the record, especially to the statement of the victim girl recorded under Section 164 Cr.P.C., submits that sufficient materials are there in the case diary and she has implicated the applicant with the offence alleged in the FIR and also under Section 4 of the POCSO Act and she was minor at the relevant point of time and therefore, Mr. Baruah contended to dismiss the petition.

6. 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 with the assistance of Mr. Baruah, learned Additional P.P.

7. The scanned copy of the record, received from the learned Court below, indicates that at the material time of occurrence, the victim was minor and in her statement, recorded under Section 164 Cr.P.C., she has implicated the applicant with the offence alleged in the FIR. In view of the nature and gravity of the offence and the punishment prescribed for the same, 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.

Sd/- Robin Phukan
JUDGE

Comparing Assistant