

GAHC010029542024



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

Case No. : AB/356/2024

NITUL ALI
R/O VILL- SATGAON
P.S. BAIHATA CHARIALI
DIST. KAMRUP, ASSAM
PIN-781030

VERSUS

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

2:MD. KHABIRUDDIN AHED
S/ LATE RAHMAN ALI
R/O VILL- SATGAON
P.O. BARBAKA
P.S. BAIHATA CHARIALI
DIST. KAMRUP
ASSA

Advocate for the Petitioner : MR. A PAUL

Advocate for the Respondent : PP, ASSAM

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

ORDER

11.03.2024

Heard Mr. A. Paul, learned counsel for the applicant and also heard Mr. B.

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

2. Apprehending arrest in connection with Baihata Chariali P.S. Case No.327/2023, under Section 376(2)(i)/313/506 IPC, read with Section 6/21 of the POCSO Act, this application under Section 438 Cr.P.C. is preferred by the applicant, namely, Md. Nitul Ali, 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 Khabiruddin Ahmed on 24.10.2023. The essence of allegation made in the aforesaid FIR is that one Nitul Ali of Satgaon under Baihata Chariali P.S. maintained sexual relationship with his daughter, namely, Smt. X (name withheld) for last 8 years, from 14 years of her age, alluring to marry her. As a result of which, she became pregnant and thereafter, accused Nitul Ali administered some tablet and got her pregnancy aborted and thereafter, again she became pregnant and having failed to get the pregnancy aborted by administering tablet this time, accused Nitul Ali took her to Oval Multispeciality Hospital and got the pregnancy aborted there and thereafter, he agreed to marry his daughter, but because of exerting pressure upon him by one Umar Ali, Ratul Ali, Arjina Begum, Harun Ali, Habil Ali, Rahil Ali, Imran Ali and Sajahan Ali, he declined to marry her.

4. Mr. Paul, learned counsel for the applicant submits that this is the 2nd pre-arrest bail application preferred by the applicant and the first one, being AB No.3954/2023 was dismissed by this Court vide order dated 19.01.2024, after perusing the case diary. Mr. Paul further submits that the ground for filing this 2nd application is that all other co-accused have already been enlarged on pre-arrest bail by a coordinate bench of this Court and maintaining parity with the accused, who have already been enlarged on pre-arrest bail, the present applicant may also be extended the privilege of pre-arrest bail. And therefore, Mr. Paul contended to allow this petition.

5. Whereas, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that there is no progress in the investigation of this case since dismissal of the first anticipatory bail application by this Court on 19.01.2024 and therefore, Mr. Sarma has opposed the petition.

6. It is to be noted here that notice was issued to the respondent No.2 and the same was served in view of office note dated 06.03.2024, but the respondent No.2 chooses not to appear before this Court.

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. It appears that vide order dated 19.01.2024 in AB No.3954/2023, this Court was pleased to dismiss the petition filed by the applicant. The only ground for filing this 2nd pre-arrest bail application is that some of the co-accused have already been granted the privilege of pre-arrest bail by a coordinate bench of this Court. But, having gone through the materials placed on record and also from the case diary, this Court finds that the applicants, who have already been enlarged on pre-arrest bail by a coordinate bench of this Court vide order dated 30.11.2023, in AB No.3749/2023, the present applicant stands in different footing. And as such, parity cannot be maintained in respect of the present applicant with the applicants of AB No.3749/2023. Besides the offences are serious in nature and case diary indicates that sufficient materials are available against the present applicant and the same has already been reflected in the order dated 19.01.2024.

9. In view of above and also in view of the materials available in the case diary, 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.

10. Case diary be returned.

**Sd/- Robin Phukan
JUDGE**

Comparing Assistant