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

Case No. : AB/2492/2024

AMIR HUSSAIN
S/O LATE AFSOR ALI
R/O VILL- DHUPAGURI PATHAR
P.S. DHING
DIST. NAGAON, ASSAM

VERSUS

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

2:NUR NEHAR BEGUM
W/O SAIFUL ISLAM
R/O VILL- DHUPAGURI PATHAR
P.S. DHING
DIST. NAGAON
ASSAM
PIN NO. 78212

Advocate for the Petitioner : MR. R MAJUMDAR, MR. JUNM LASKAR, MS. J GHOSH

Advocate for the Respondent : PP, ASSAM, MR. S BISWAS, legal aid counsel(R-2)

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 29.11.2024

Heard Mr. R. Majumdar, learned counsel for the applicant. Also heard Ms. N. Das, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. S. Biswas, learned Legal Aid counsel for the respondent No. 2.

2. Apprehending arrest in connection with Dhing P.S. Case No. 170/2023, under Sections 376/511 of the IPC, read with Section 8 of the POCSO Act, this application under Section 482, BNSS has been preferred by the applicant, namely, Amir Hussain, for grant of pre-arrest bail.

3. Notably, Dhing P.S. Case No. 170/2023 has been registered on the basis of an FIR lodged by one Nur Nehar Begum on 12.09.2023.

4. The gravamen of the allegation made in the FIR dated 12.09.2023, is that on that day, at about 10 a.m., the applicant herein called the minor daughter of the first informant, aged about 8 years, to the bank of the pond situated backside of her house and gave her a sum of Rs. 10/- and asked her to do indecent work with him and also to open her pant being worn by her, but somehow, she managed to escape.

5. Mr. Majumdar, learned counsel for the applicant submits that the applicant is innocent and no way involved with the offence alleged in the FIR and before filing of the FIR by the first informant, the applicant herein and some other persons had lodged one complaint against the informant and to wreak vengeance, the first informant herein lodged the present FIR, and that the investigation of the case has already been completed and charge-sheet has been submitted before the learned trial Court and summon has been issued and

the next date is fixed for service report. Mr. Majumdar also submits that there was no skin to skin to contact with the victim girl with that of the applicant as required under Section 7 of the POCSO Act, and that there is material contradiction in the statement of the victim girl recorded under Sections 161 as well as 164, CrPC. Mr. Majumdar further submits that the applicant will appear before the learned trial Court and will face the trial and till the date of his appearance, he may be granted interim protection and therefore, it is contended to allow this application.

6. On the other hand, Ms. Das, learned Additional Public Prosecutor, by referring to the scanned copy of the record received from the learned trial Court, especially to the statement of the victim girl, recorded under Section 164, CrPC, submits that the allegations levelled against the applicant are serious in nature and at this stage, the privilege of pre-arrest bail may not be extended to the applicant.

7. Mr. Biswas, learned Legal Aid counsel for the respondent No. 2 has also vehemently opposed the application and by referring to two decisions of Hon'ble Supreme Court in the cases of **Abhishek vs. State of Maharashtra and Ors.**, reported in (2022) 8 SCC 282 and **Prem Shankar Prasad vs. State of Bihar and Anr.**, reported in (2022) 14 SCC 516, Mr. Biswas submits that since the applicant has not cooperated with the investigating agency and was absconding and charge-sheet has been submitted against him showing him as absconder, he has forfeited his right to get the privilege of pre-arrest bail. Mr. Biswas also submits that of course some contradictions are there in the statements of the victim girl recorded under Section 161 as well as 164, CrPC and the weightage has to be given to the statement under Section 164, CrPC, and that the allegations in the statement under Section 164, CrPC are serious in

nature and therefore, it is contended to dismiss the application.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and also perused the scanned copy of the record received from the learned trial Court.

9. It appears that the case was registered under Sections 376/511 of the IPC, read with Section 8 of the POCSO Act and having gone through the statements of the victim girl recorded under Sections 161 as well as 164, CrPC, this Court is unable to agree with the submission of Mr. Majumdar that there was no skin to skin contact of the applicant with the victim girl. Moreover, that is not the requirement of Section 7 of the POCSO Act and the submission of Mr. Majumdar, in this regard, is found to be devoid of substance and misleading. Further, the statement of the victim girl recorded under Section 164, CrPC indicates that the allegations are more serious in nature, rather than the allegations made in the FIR and the statement recorded under Section 161, CrPC.

10. Though, Mr. Majumdar submits that there was dispute between the informant and the applicant and the applicant had filed a complaint before the police against the first informant, yet no case has been registered upon the said complaint and as such, the contention of Mr. Majumdar cannot be taken into account.

11. I have also gone through the decisions referred by Mr. Biswas, learned Legal Aid counsel for the respondent No. 2 and it appears that there is substance in his submission and the decisions referred by him strengthen his submission.

12. Having considered above and also considering 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 anticipatory bail application stands dismissed. The applicant shall have to surrender before the learned trial Court within a period of 15 days from today.

JUDGE

Comparing Assistant