
(2021) 08 GAU CK 0050
In the Gauhati High Court
Case No : Anticipatory Bail No. 763 Of 2021

Dhiraj Kr. Kakati	Vs	APPELLANT
State Of Assam		RESPONDENT

Date of Decision : 13-08-2021

Acts Referred:

Protection of Children from Sexual Offences Act, 2012 — Section 2(d), 7, 8
Code Of Criminal Procedure, 1973 — Section 41A, 438

Citation : (2021) 08 GAU CK 0050

Hon'ble Judges : Soumitra Saikia, J

Bench : Single Bench

Advocate : D K Das

Final Decision : Disposed Of

Judgement

1) Heard Mr. D. K. Das, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional PP for the State.

2) Case diary called for by this Court earlier has been received and the same is produced before this Court. As such this matter is taken up for disposal today in the presence of both the counsels.

3) This anticipatory bail petition is filed by the petitioner Shri Dhiraj Kr. Kakati, apprehending arrest in connection with Barpeta Police Station Case

no. 2617/2020 under section 8 of the POCSO Act. The case was registered on the basis of FIR dated 14.12.2020 filed by the informant Smt. Chaya

Das wife of one Shri Dipak Das.

4) It is alleged in the FIR by the informant that the son of the informant who is student of class 10 in Gazia High School, Barpeta went to the school on

12.12.2020 to get a certificate in order to get his Aadhar Card issued. Around 11.30 am the accused person (who is a Head Master in the said school)

very tactfully asked the informant's son to bring a glass of water. There was no other person in the queue and the informant's son was the last person. When the informant's son went inside the office room to bring the glass of water, while he was cleaning the glass utensil, the accused in order to fulfil his evil intention grabbed the minor son and kissed him both his cheeks twice. He even asked him to touch his private organs. The informant's son was ashamed and scared. Even after stiff resistance the accused still continued to forcibly persist with his intention. Somehow, the informant's son managed to escape from his clutches and eventually narrate the whole incident to his friends and female teachers of the school and as well as to the informant and family members when he returned home from school. The informant therefore filed the FIR and sought appropriate action against accused person.

5) The learned counsel for the petitioner submits that the entire allegation is false and concocted and that it has been lodged to harass and take undue advantages of the petitioner. The learned counsel for the petitioner submits that the petitioner is a respected teacher. He is the Headmaster of the said school. In recognition of his dedicated service, a certificate of excellence was awarded to him by Govt. of Assam, copy of which is enclosed as Annexure-B to the instant AB petition.

6) The learned counsel for the petitioner submits that there was an agreement between the informant's husband and the petitioner to arrive at a compromise in relation to the incident of the obscene behavior at Gajia High School. The learned counsel referring to the agreement (Annexure "D") to the petition submits that in the presence of witnesses named therein, the matter has been mutually compromised between the informant's family and the petitioner. The learned counsel for the petitioner has also referred to the notarized affidavits executed by the witnesses to the said mutual settlement arrived at by and between the petitioner and the informant's family in support of his contention.

7) The further contention of the learned counsel for the petitioner is that the mandate and the directions of the Supreme Court in Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 has not been followed by police and as a consequence of which, no section 41 A notice has been issued by the police although the punishment prescribed for Section 8 of the POCSO is up to five

years.

8) I have heard the learned counsels for the parties and have also carefully perused the case diary produced in the Court as well as the pleadings on record.

9) It is seen that the instant matter is the second bail petition which has been preferred by the petitioner. The earlier petition being AB 215/2021 has been rejected by a co-ordinate Bench of this Court vide order dated 15.02.2021 which is enclosed as Annexure-C to the bail petition.

10) The case diary reveals that the police had visited his place of residence a number of times but he was not available. It is also seen from the birth certificate of the victim boy issued from the office of the D.H. S., Court of Assam, that his date of birth is shown as 25.11.2005 and as such his age will be about 15 years at the time of occurrence and therefore he is a minor.

11) Perusal of the case diary also reveals the statements of several witnesses who substantiate the allegations made in the FIR. The witnesses comprise of fellow students of the victim boy as well as his teachers in school.

12) Under the POCSO Act, 2012 under Section 2 (d) a child has been defined to mean any person below the age of eighteen years.

13) Under Section 7 sexual assault has been defined as :

â??7. Sexual Assault- whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.â??

14) Under Section 8 Punishment for sexual assault has been defined as :

â??8. Punishment for sexual assault â?" whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.â??

15) It is also seen from the pleadings that the petitioner and the informantâ??s family, a mutual understanding/settlement has been arrived at regarding the said allegation. Therefore, it is evident that there is a presumption against the petitioner that the allegations made in the FIR could be prima facie correct.

16) Further as discussed above, this is the second bail application preferred by the petitioner pursuant to the rejection of the bail petition vide the order

dated 15.02.2021 passed in AB No. 215/2021. No new ground has been specifically urged.

17) In that view of the matter and also in view of the incriminating materials available in the Case Diary this Court is of the view that petitioner is not

entitled for grant of privilege of anticipatory bail under Section 438 Criminal Procedure Code (CrPC) as prayed for.

18) The prayer for anticipatory bail is therefore, rejected.

19) Having said that, since the petitioner has referred to judgment of Arnesh Kumar (Supra) and submitted that mandate of Arnesh Kumar has not

been followed, this Court is of the view that there can be no doubt that the judgment of the Apex Court for Arnesh Kumar (Supra) is binding on the state and its officers.

20) The Apex Court, however in Arnesh Kumar (Supra) has held that the discretion to arrest or not to arrest a person is to be exercised by the police

officer namely, the Investigation Officer in the concerned case. It is held by the Apex Court that the said directions contained in Arnesh Kumar

(Supra) shall be applicable in all cases where the offence is punishable with imprisonment for a term which may be less than seven years or which

may extend to seven years with or without fine. Needless to say the directions of the Apex Court in the said judgment will be borne in mind by the

Investigating Officer during the course of the investigation of this case.

21) The bail petition is accordingly disposed of. Case diary returned.