

**Misc. CrI. Case no. 424 of 2021**

**03.08.2021**

Seen the petition u/s 438 of the Cr.P.C. filed by accused-petitioner Ayup Khan @ Ayub Khan who is apprehending arrest in connection with Goalpara P.S. Case No.432/2021 corresponding to G.R. Case No.1494/21 u/s 366(A)/34 of the IPC.

The case diary and the G.R. Case record are received and I have perused the same. I have also heard the learned counsel for the accused-petitioner as well as the learned Public Prosecutor in the virtual court through video conferencing.

The allegation is that on 17.07.2021, at about 5-00am, the accused-petitioner had kidnapped the victim girl, aged about 15 years, niece of the informant, from the house of the informant situated at Bhalukdubi, Goalpara Town.

The learned counsel for the accused-petitioner submitted that the allegation against the accused-petitioner is completely false and fabricated. It is also submitted that the victim girl herself went to the house of the accused petitioner and forced him to marry her or to leave the house with her. It is further stated that the accused-petitioner is a law abiding person and there is no chance of absconding and hampering or tampering the police investigation and he is ready to comply with any condition to be imposed upon him on granting him pre-arrest bail.

On perusal of the case diary and the case record, it appears that during investigation, the victim girl was recovered

and her statement was recorded u/s 164 of the Cr.P.C. From the statement of the victim girl u/s 164 of the Cr.P.C, it appears that she had love affairs with accused Ayub Khan for two years and earlier, she had eloped with him on three occasions and on 17.07.2021 also, she on her own accord had gone to the house of Ayub situated at Nobi Nagar where from they went to Cochbehar. She categorically stated that accused-petitioner had never forced her. From the case diary, it further appears that the investigation has reached to a satisfactory level. The case has also been registered only u/s 366(A) of the IPC. The material witnesses have been examined. Though as per the medical report, the age of the victim girl is between 12 to 15 years but from the statement of the victim girl it appears that she on her own accord went with the the accused-petitioner and the accused-petitioner did not used any kind of force upon her. However, she disclosed her age to be 15 years at the time of recording her statement . The Certificate of Birth issued by the Govt. of Assam from the Directorate of Health Services shows her date of birth to be 24-01-2006 as such, she is above 15 years of age at the time of incident. So, far the accused Ayub Khan is concerned he is about 21 years. It appears from record, statement of the victim girl and witnesses that they were in love with each other so, they eloped and wanted to get married. In her statement , the victim said that she had eloped with the said accused of her own free will and he had not forced her. Thus, the conduct of the victim girl indicates she left her home of her own free will and if she had any physical

relationship with the said accused the same must be out of her affection for him. The above description of facts do not even remotely suggest that the accused had ever induced and / or force the victim to leave her parents house.

In this case, the victim girl takes initiative and is active in taking decision of going with the accused Ayub Khan and it appears that she understand the meaning of man and woman relationship and marriage and as such, the rigor of offence is reduced. There is only allegation of kidnapping of the victim in the FIR and accordingly, the police registered the case u/s 366(A) of the IPC. As such, in this case there was many mitigating factors as the accused and the victim were in love with each other and they eloped and wanted to marry and settle down. The victim girl had no grievances at all since the victim girl above the age of 15 years appears to understand the ramifications of marrying and having physical relation, if any, with the accused then there seems no reason to refuse the prayer for anticipatory bail and punish the accused alone.

Having regard to that of circumstances as well as the progress of investigation and since the learned Public Prosecutor did not raise any objection, this court is of the view that custodial interrogation of the present accused-petitioner is uncalled for. However, without expressing any opinion on the merits of the case, considering the nature of accusation, this court is of the view that in the event of his arrest, the accused Ayub Khan be released on anticipatory bail till the submission of police report, if any, u/s 173(2) of the Cr.P.C before the

competent Court on furnishing a personal bond of Rs.25,000/- (Rupees twenty five thousand) only with one local surety of like amount to the satisfaction of the arresting authority concerned with the following conditions:

(i) The accused Ayub Khan shall make himself available for interrogation by police as and when required;

(ii) The accused Ayub Khan shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade from disclosing such facts to the court or to any police officer;

Send back the C.D. with a copy of this order. A copy of this order shall also be furnished to the accused-petitioner or his learned counsel forthwith by the Bench Asstt./Court Master under his signature and this order shall also be uploaded in the official website of the District Judiciary, Goalpara.

Also send back the G.R. Case record.

Inform all concerned accordingly.

This Misc. Case is thus disposed of.

Sessions Judge

Goalpara