

GAHC010028522023



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

**Case No. : Bail Appln./491/2023**

SAJAHAN ALI @ SHAHJAHAN ALI  
S/O- LATE IDIL KHAN @ LATE EDIL ALI, R/O- NEW PIRADHARA, P.S.  
ABHAYAPURI, DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE P.P., ASSAM

**Advocate for the Petitioner : MR H R A CHOUDHURY**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 14-02-2023**

Heard Mr. H.R.A. Choudury, learned Sr. counsel assisted by Mr. A. Ahmed, learned counsel for the applicant. Also heard Mr. D. Das, learned Addl. P.P. Assam appearing for the State.

The applicant herein was arrested on 04-02-2023 in connection with Abhayapuri

P.S. Case No. 39/2023 registered under Sections 9/10/11 of the Prohibition of Child Marriage Act, 2006 read with Sections 6/17 of the POCSO Act, 2012 and since then, he is in custody.

By filing this application under Section 439 Cr.P.C. the applicant is praying for an order for his release on bail.

By referring to the FIR dated 02-02-2023, Mr. Choudhury, learned Sr. counsel for the applicant submits that as per the FIR, the marriage took place in the year 2021. However, none of the family members of the alleged victim girl has been arrested. He further submits that the applicant is merely a Moulana in a Madrassa and not a Kazi or Sub-Kazi nor has he been named in the ejahar. Therefore, the arrest of the applicant is wholly unjustified.

Mr. Das, learned Addl. P.P. Assam submits that he be granted sometime to produce the Case Diary. He has also objected to the bail prayer made by the applicant.

After going through the record, it appears that there is no allegation against the applicant in the FIR. The basic allegation in the FIR, even if found to be correct, would relate to an offence under Sections 10/11 of the Act of 2006. Under the said provisions any person including the parents or guardian of a minor, who is found to promote or permit or negligently fails to prevent child marriage from being undertaken would be liable to be punished for a maximum period of 02 years and also to pay fine, which may extend upto one lakh rupees. But it has to be established that marriage of a child took place and the guilty persons knowingly had a role to play in the matter. The applicant has been in custody since 04-02-2023. It appears from the FIR that the allegation is basically against the husband and the family members. There is no allegation that the applicant had facilitated the marriage. Under the circumstances, the applicant's further custodial interrogation, in the opinion of this Court, would be unnecessary in the facts and circumstances of this case, more so since the fact relating to the marriage is not only in the public domain but is also apparently known to the informant as well.

Under the circumstances, I am of the view that it is a fit case to grant bail to the

applicant without calling for the Case Diary.

The applicant, viz. Sajahan Ali @ Shahjahan ali is, therefore, allowed to go on bail on furnishing a bond of Rs. 20,000/- with one local surety of like amount to the satisfaction of the learned Special Judge, North Salmara at Abhayapuri.

It is, however, made clear that the applicant shall not leave the jurisdiction of the Special Judge, North Salmara at Abhayapuri without his prior permission and shall render full cooperation in the investigation of this case.

Violation of the above conditions may lead to cancellation of the bail.

Bail application stands disposed of.

**JUDGE**

GS

**Comparing Assistant**