

GAHC010226792021



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

**Case No. : AB/4414/2021**

UDDHAB KUMAR BHARALI  
S/O LATE LALIT CH. BHARALI  
R/O KB ROAD, WARD NO. II, BHAIKAB NAGAR, P.S. NORTH LAKHIMPUR,  
IN THE DIST. OF LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner** : MR. A M BORA

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

**BEFORE**  
**THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**  
**ORDER**

**28.12.2021**

Heard Mr. A M. Bora, the learned Senior Counsel assisted by Mr. D. K. Baidya, the learned counsel for the petitioner. Also heard Ms. S. Zahan, the learned Additional Public Prosecutor for the State of Assam.

By this application under Section 438 Cr.P.C., the petitioner, namely, Uddhab

Kumar Bharali is seeking pre-arrest bail in connection with North Lakhimpur P.S. Case No. 1332/2021 under Sections 354/376(i)/376(j)/376(k) of IPC read with Section 6 of the POCSO Act.

In view of the allegation, this Court is inclined to call for the case diary fixing **07.01.2022.**

Mr. Bora the learned Senior Counsel contends that the petitioner is the recipient of prestigious award of "PADMASREE" from the President of India in 2019 and also having patent over of 460 machineries. According to Mr. Bora, the office of the CWC, Lakhimpur approached the petitioner and requested him to provide foster home to two girls, and the petitioner owing to his benevolence and philanthropic nature agreed to have the two girls placed under his and his wife's care and accordingly vide the order of Foster Care dated 31.08.2020 both the girls started to stay with his family as family members and the girls were given utmost care by the petitioner and his family. According to the learned counsel for the petitioner, some dispute arose with one Anil Kr. Bora, Chairman, Child Welfare Committee, (CWC) Lakhimpur, with the petitioner and accordingly vide Communication dated 26<sup>th</sup> October, 2021, the petitioner was asked to produce the girls as stated above on or before 28<sup>th</sup> October, 2021 at 1 P.M. and accordingly the petitioner produced the two girls before the CWC on 28<sup>th</sup> October, 2021 and since then the girls are under custody of the CWC. Subsequently vide communication dated 14<sup>th</sup> December, 2021 (Annexure-VI), the petitioner was asked to return the Foster Care Agreement which was executed between the petitioner and CWC, Lakhimpur, on or before 17<sup>th</sup> December, 2021. Accordingly on 17.07.2021, the said Deed of Foster Care was cancelled by the CWC on the ground that the child are not willing to go back to

the Foster parents family. Mr. Bora, the learned senior Counsel contends that due to the dispute between the petitioner and the Member of the CWC and the Chairman, such deed had been cancelled. According to Mr. Bora from 28<sup>th</sup> October, 2021 till lodging of the complaint on 17<sup>th</sup> December, 2021, the alleged victims were under the care and custody of the CWC. Mr. Bora, the learned Senior Counsel contends that even the ground of cancellation nowhere reflects any sexual abuse to the alleged victims. Mr. Bora, the learned Senior Counsel, further submits that even in the report, which has been treated as FIR, there is no specific statement of the victim alleging any sexual harassment been quoted, except a statement that the foster father used to hold her hand to bad activities. In that view of the matter, Mr. Bora submits that this an after thought and result of a conflict between the petitioner and the CWC. Accordingly he prays for an interim protection taking note of the social status of the petitioner.

Per contra, Ms. Zahan, the learned Additional PP, Assam seriously objects to the ground of interim protection to the petitioner in view of the fact that there are allegations of sexual abuse on the minor victims who were under the care and custody of the petitioner. According to Ms. Zahan, social status will not be a consideration in case of such allegations.

I have given anxious consideration to the submissions of the learned counsel for the parties.

The offence alleged in the instant case is serious in nature, which includes the offence under Section 6 of the POCSO Act. However, considering the antecedents of the petitioner, his allegation that the instant FIR has been lodged to humiliate and malign his reputation, the counter prosecution lodged by the petitioner against the Chairman & Member of CWC and also taking note of the

fact that the FIR annexed in the present petition donot disclose any specific statement of the victims, this court is of the opinion that interest of justice would be made including that of the victim and the informant if the following order is passed as an interim measure.

Accordingly, interim pre-arrest bail to the petitioner namely, Uddhab Kumar Bharali is granted to the effect that in the event of arrest of the petitioner above named, in connection with the case aforementioned, he shall be released on bail on furnishing bail bond of Rs.25,000/- with a suitable surety of the like amount, to the satisfaction of arresting authority. The pre-arrest bail is granted on the following conditions:

- (1) The petitioner shall not leave the territorial jurisdiction of the aforesaid police station, without prior written permission from its officer-in-charge,
- (2) The petitioner shall not try to contact the victim by any manner including the medium of telephone or internet.
- (3) The petitioner shall not hamper with the investigation, or tamper with the evidence of the case,
- (4) The petitioner 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 him from disclosing such facts to the Court or to any police officer,
- (5) The petitioner shall appear before the Officer-in-charge, North Lakhimpur PS within 7(seven) days from today for recording of his statement,
- (6) The petitioner shall appear before the I.O. of the Case as and when called for.

List accordingly.

**JUDGE**

**Comparing Assistant**