

GAHC010028572026



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

Case No. : Crl.Pet./223/2026

FULBAR ALI AND ANR
SON OF HUSSAIN ALI,PRESENTLY RESIDE AT SUNDARBAN NAGAR,
DOTBAZAR, P.S.- HATIGAON, DISTRICT KAMRUP METRO, ASSAM.

2: MANISHA KHATUN
D/O CHABUR ALI
PRESENTLY RESIDENT OF SUNDARBAN NAGAR
DOTBAZAR
P.S. HATIGAON
DIST. KAMRUP (METRO)
ASSAM
PERMANENT RESIDENT OF VILL- GOROIMARI
P.S. CHAYGAON
DIST. KAMRUP
ASSA

VERSUS

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

2:DIPA BORA DUTTA
W/O SUBHAJIT DUTTA
RESIDENT OF HOUSE NO.8
MILANJYOTI PATH
P.O. AND P.S. HATIGAON
DIST. KAMRUP (METRO)
ASSAM
PIN-78103

Advocate for the Petitioner : MR. N J DUTTA, M RAHMAN,MR A BASUMATARY,MR. M M ZAMAN,MR N AHMED

Advocate for the Respondent : PP, ASSAM, MS. T PARASHAR, AMICUS CURIAE (R-2)

:: BEFORE ::
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

22.04.2026

Heard Mr. N. Ahmed, the learned counsel appearing for the petitioners. Also heard Mr. P.S. Lahkar, the learned Addl. Public Prosecutor, Assam representing Respondent No.1 as well as Ms. T. Parasar, the learned Amicus Curiae representing the Respondent No.2.

2. This is an application under Section 528 of the BNSS, 2023 praying for quashing the proceedings of Sessions Special Case No.131/2023 pending in the court of the learned Addl. Sessions Judge-cum-Special Judge (POCSO), Kamrup (M) at Guwahati.

3. On 02.02.2023, the respondent no.2 had lodged an FIR before police alleging that a girl below 18 years of age was given in marriage to the petitioner Fulbar Ali. Police filed the *charge sheet* under the provisions of POCSO Act and under the Prohibition of Child Marriage Act, 2006.

4. Now, the girl who is aged about 20 years and Fulbar Ali have jointly filed this application stating that they are now living peacefully and the girl said that she does not want her husband Fulbar Ali to be punished for the alleged offence.

5. I have considered the submissions made by the learned counsel of both sides.

6. The guidelines for consideration of a petition under Section 482 of the CrPC has been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. Paragraph 102 of the judgment reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. Reverting to the case in hand, this Court is of the opinion that under the given circumstances, there is no possibility of conviction of Fulbar Ali in this case. Therefore, allowing the criminal proceedings to continue before the trial court, would be nothing but an abuse of the process of the court. This is a fit case for exercising power under Section 528 of the BNSS, 2023.

8. The criminal petition is allowed. The proceedings of the Sessions Special Case No.131/2023 pending in the court of the learned Addl. Sessions Judge-cum-Special Judge (POCSO), Kamrup (M) at Guwahati, is set aside.

JUDGE

Comparing Assistant