

GAHC010065002026



2026:GAU-AS:4660

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

Case No. : Crl.Pet./477/2026

SAMSUN NEHAR AND 2 ORS.
D/O SOFIOR RAHMAN, W/O MALEQUE UDDIN, R/O KALABARI UNDER
RAJABALA BHALUKKANDI REVENUE VILLAGE, PO PATAKATA, PS SOUTH
SALMARA, DIST SOUTH SALMARA MANKACHAR, ASSAM, PIN 783127

2: MALEQUE UDDIN
S/O MOYNAL HOQUE
R/O KALABARI UNDER RAJABALA BHALUKKANDI REVENUE VILLAGE
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
PIN 783127

3: MANIR UDDIN ALIAS MONER ALI
S/O LT DINA SK
R/O TUMNI SIMLAKANDI
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
PIN 78312

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. M U MONDAL, MR A ALIM SK,MR. A W MONDAL,MR K ISLAM

Advocate for the Respondent : PP, ASSAM,

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

01.04.2026

Heard Mr. A. Alim Sk., the learned counsel appearing for the petitioners. Also heard Mr. K. Baishya, the learned Addl. Public Prosecutor, Assam.

2. This is a joint application under Section 528 of the BNSS, 2023 praying for quashing the proceedings of Special (P) Case No.38/2024 pending in the court of the Special Judge, South Salmara, Mankachar.

3. On 02.10.2023, Abdul Baser had lodged an FIR before police stating that the present petitioner Malek Uddin has married a girl below 18 years of age. Police registered the case being South Salmara P.S. Case No.294/2023 under Sections 9/10/11 of the Prohibition of Child Marriage Act, 2006 read with Section 6/17 of the POCSO Act.

4. On conclusion of investigation, police filed the charge sheet under Sections 9/10/11 of the Prohibition of Child Marriage Act, 2006 read with Section 6/17 of the POCSO Act.

5. Now, Malek Uddin and the said minor girl (now a major) have come together to this Court stating that they are now living happily and do not want Malek Uddin to be prosecuted further.

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

7. 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.”

8. Reverting to the case in hand, this Court is of the opinion that since the girl has now attained majority and has been living peacefully with her husband, there is no

possibility of conviction of Malek Uddin in this case. Therefore, allowing 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 the power under Section 528 of the BNSS, 2023.

9. The criminal proceedings of Special (P) Case No.38/2024 pending in the court of the Special Judge, South Salmara, Mankachar, is quashed and set aside.

JUDGE

Comparing Assistant