

GAHC040000132023



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

Case No. : BA 2/2023

1:Nabam Tato
S/o Sh. Nabam Tai,
R/o Jumi Village, Balijan,
PO/PS Balijan, District Papum Pare, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and Anr.
Represented by the Ld. Public Prosecutor.

2:Markio Yakam
R/o Nyokum Lapang Village

Near Holy Cross Hostel (Itanagar) PO and PS Itanagar
District Papum Pare
Arunachal Pradesh

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 01-03-2023

Heard Mr. R. Sonar, learned counsel for the applicant. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State respondent and Ms. N. Anju, learned counsel representing the complainant.

2. This application is filed under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Shri Nabam Tato, who has been languishing in jail hazot since 13.09.2022, and is presently under judicial custody at District Jail, Jyuli in connection with W.P.S. Case No.102/2022, registered under Section 376 (2)(f)(n)(3)/354/506/34 *read with* Section 6 & 8 of POCSO Act.

3. LCR has been received and I have perused the same.

4. It is submitted by the learned counsel for the applicant, Mr. R. Sonar, that vide order dated 05.01.2023, the present accused/applicant was granted with interim bail w.e.f. 11.01.2023 to 23.01.2023 and was directed to surrender before the learned Special Judge, POCSO, Yupia on 24.01.2023. Thus, complying the order of this Court the accused/applicant accordingly surrendered himself and since then, he is behind the bar.

5. Mr. R. Sonar, learned counsel has submitted that the present accused/applicant earlier bail prayer was rejected by this Court vide order dated 06.12.2022, and accordingly he was surrendered before the police on

07.12.2022, and since then he was in custody. However, after the said rejection order of his bail application, the accused/applicant had filed another bail prayer, so, as to appear his semester examination, and accordingly he was granted interim bail on 05.01.2023 subject to certain terms and conditions. The learned counsel also submitted that the present accused/applicant is a student, who is pursuing his BA.LL.B course from the Himalayan University and his classes has already been started from 06.02.2023. He also submitted that the accused/applicant never jumped over any conditions of the interim bail which was granted twice to him and he accordingly surrendered before the Court complying the order of this Court.

6. The learned counsel for the applicant also submitted that the victim girl and the present accused/applicant are of same age group and they entered into friendship through Instagram and they used to chat with each other and thus, developed some biological attractions with mutual innocence of both the parties. He further states that the accused/applicant belongs to a respectful family and he is also pursuing his BA.LL.B courses and hence, there is no possibility of hampering or tampering of the witnesses, if, he is enlarge on regular bail and also he will regularly appear before the Court and abide by all the conditions if any impose upon him.

7. Further, Mr. R. Sonar, learned counsel for the applicant has relied on the decision of the Hon'ble High Court of Tripura reported in 2021 SCC online Tri 534 in the case of *Mira Rani Das vs. State of Tripura* and also relied on another case of Hon'ble High Court of Madras, reported in 2019 SCC online Mad 18850, wherein, the Hon'ble High Court expressed the view that "*when the girl below*

18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction of opposite sexes”.

8. Thus in the instant case also the girl, at the time of alleged incident was more than 16 years of age and boy was hardly 18/19 years of age and hence, out of mutual innocence and biological attractions for opposite sexes some incident might have happened. Thus, by considering the length of detention undergone by the accused/applicant as well as considering the fact that he is pursuing his studies and belongs from respectable family, his bail application may be considered.

9. On the other hand, Mr. G. Tado, learned Additional Public Prosecutor, has submitted that the case is serious in nature and the bail application prayer was rejected earlier by this Court, considering the statement made by the victim under Section 164 Cr.P.C. as well as other incrimination materials available in the record against the accused/applicant. He has raised objection in the prayer made by the applicant. Further, he has submitted that there is a probability of hampering and tampering of the evidence of the witnesses especially the prosecutrix, if, the accused/applicant is enlarge on bail.

10. At the same time the learned counsel for the respondent No. 2, Ms. N. Anju, has also raised objection that there is a probability of hampering and tampering of evidences of the witnesses, if the accused/applicant is enlarge on bail and in that event the victim may be prejudiced and hence, considering the

nature and gravity of the offence the bail prayer of the present accused/applicant should not be considered at this stage.

11. The learned Additional Public Prosecutor has also relied on the decision of the Hon'ble Apex Court reported in 2004(4) Supreme 84 in the case of *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.*, wherein, it has been held that the plea of long detention period cannot be a ground for enlarging the accused on bail, if the gravity of the offence is serious in nature. The para 13 of the said judgment reads as under;

"In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, not the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail".

12. After hearing the submissions made by the learned Advocates of both sides, I have perused the case records and it is found that the earlier prayer was rejected by this Court considering the statement of the victim recorded under Section 164 Cr.P.C. as well as the incriminating materials available against the accused/applicant. It is the fact that the accused/applicant is in custody for considerable period and he was already granted interim bail in two consecutive occasions, considering his future and upcoming examination. But, it cannot be denied that the nature of allegations brought against the present accused/applicant is serious in nature. Thus, considering the statement of the victim recorded under Section 164 Cr.P.C. as well as considering the incriminating materials available against the present accused/applicant, there is a probability of hampering or tampering of the witnesses and at the same time it is also admitted position that the victim is a minor and hence there is a probability of influencing the victim and, which cannot be denied.

13. So, considering the incriminating materials available in the record, and also considering the gravity of the offence this Court is of the view that this is not a fit case where the privilege of bail cannot be extended to the accused/petitioner at this stage only on the ground of long detention period and accordingly, the same stands rejected.

14. In terms of above, this bail application stands disposed of.

15. The LCR be sent back.

JUDGE

Comparing Assistant