

GAHC040004182023



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

Case No. : BA 38/2023

1:Japo Lamnio
S/o Shri Saji Lamnio,
Permanent Resident of Lamnio Village, PO Khenewa/PS Seppa, District East
Kameng Arunachal Pradesh, on behalf of the accused Shri. Thomas Lamnio.

VERSUS

1:THE STATE OF AP
Through the Public Prosecutor.

Advocate for the Petitioner : T Lamnio

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 20.04.2023

Heard Mr. T. Lamnio, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused, who has been

arrested in connection with POCSO Case No. 11/2022, arising out of Seppa W.P.S. Case No. 12/2022, under Section 376 (3) of the Indian Penal Code *read with* Section 6 of the POCSO Act.

The scanned copy of the LCR along with the Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioner, Mr. T. Lamnio, that at the time of allegation of kidnapping, the victim girl was major and she left her house along with the accused only out of her consent. But, when the family members of the victim came to know that the accused is a married person having 2 children, the victim's family obtained a false and fabricated birth certificate, wherein, the date of birth of the victim girl is shown to be in the year 2006. But, after filing RTI Application, it is informed by the concerned Birth and Death Registration Office that no such birth certificate was issued by the concerned authority in the name of the victim. Thereafter, the family members of the accused also approached the Headmaster of the concerned school and accordingly, it is found that the victim girl was major at the time of the alleged incident. An application was also filed seeking bail on the ground that the girl was major at the time of the incident. But the same was rejected by the learned Special Judge, though the school headmasters etc. were called for as witnesses. Further it is submitted by the learned counsel for the petitioner that the accused is behind the bar since his date of arrest, i.e. 21.08.2022, and hence, considering his length of detention, he may be enlarged on bail.

So, the present petition is filed basically on 2 (two) grounds that the

victim was a minor girl at the time of alleged incident and at the same time, they also prayed for bail considering the length of detention undergone by the accused till date.

In this context, the learned Additional Public Prosecutor, Ms. T. Jini, has submitted that the earlier bail application of the accused was rejected by the learned Special Judge considering the incriminating materials against him and also considering the fact that after registration of the case, the accused person kidnapped the victim girl and detained her for a night and committed rape upon her for several times.

After hearing the submissions made by the learned counsels for both sides, I have perused the case record as well as the LCR along with the Case Diary and it reveals that the case is at the stage of recording of defence evidence and the statement of some of the witnesses are also being recorded by the learned Special Judge, though no order is passed yet on that aspect regarding the minority/majority of the victim girl. However, after perusal of the case record, the statement of the witnesses as well as the victim, it is seen that very serious allegation is brought against the present accused petitioner and he not only committed rape on the victim, but also fled away from the custody during the trial of the case and thereafter he has to be rearrested in connection with this case. Apart from that, even after registration of the case, he again committed rape on the victim girl by kidnapping her.

So, considering all above aspects of the case, including the nature and gravity of the offence as well as the conduct of the accused, I do not find it a fit

case to allow the accused to go on bail and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant