

GAHC040012032023



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

**Case No. : BA/88/2023**

Smti Rita Sharma  
W/o Sri Bhadra Chetry, a permanent resident of Amguri Goan, Tinsukia, Assam and  
presently residing at Hapoli, near Padi Yubey Stadium Hapoli, PO and PS Ziro,  
Lower Subansiri, Arunachal Pradesh, Mobile No. 9233644220

VERSUS

The State of AP and Anr.  
through Public Prosecutor.    2:Smti Tage Yanku  
Age: 0  
Occupation

**Advocate for the Petitioner    : N Rama**

**Advocate for the Respondent : P P of AP**

**BEFORE  
HONBLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 07-11-2023**

Heard Mr. N. Rama, learned counsel for the applicant. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State respondent and Mr. G. Riba, learned counsel for the respondent No.2.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by the applicant on behalf of alleged accused, namely, Sri Badra Chetry @ Rohan, who has been languishing in jail hazot since 03.06.2023 in connection with Ziro WPS Case No.02/2023, under Section 354/509 of IPC and read with Section 8 of POCSO Act.

It is submitted by the learned counsel for the applicant, Mr. N. Rama, that the present accused is behind the bar since 03.06.2023 and the prosecution evidence has already been closed and the case is fixed on 10.11.2023 for recording the statement of the accused under Section 313 of Cr.P.C. He further submits that on the last occasion objection was raised by the prosecution on the ground that the evidence of the victim was not recorded and she was not cross examined. However, from the record, it is seen that her statement has been recorded and the prosecution evidence has already been closed and the case is almost at the final stage of hearing. He further submits that the alleged accused has treated the victim as his younger sister and the FIR has been lodged against him with some false and concocted allegation by the mother of the victim. He therefore, prays for grant of regular bail stating that the prosecution evidence has already been closed and also there is no question of hampering and

tampering of the witnesses and evidence of the prosecution. Further the accused is behind the bar since 5(five) months. Hence, considering the length of detention also he should be released on bail. Further, the accused/petitioner is ready to appear in each and every date as fixed by the learned Court below.

On the other hand, Ms. L. Hage, learned Additional Public Prosecutor, submits that the case is almost at the stage of final hearing and if the alleged accused is allowed to go on bail at this stage, there is a probability absconding. Accordingly, she raised objection on the prayer made by the applicant.

In this connection, Mr. G. Riba, learned counsel for the respondent No.2 has submitted that the victim was sexually assaulted by the accused, who is a gym instructor and there are sufficient materials against the present accused. He further submits that presumption under Section 29 of POCSO Act can also be considered at the trial stage after framing of charge.

Section 29 of the said Act speak as “when a person is prosecuted for committing an offence of sexual assault against a minor, the special court trying the case “shall presume” the accused to be guilty. In support of his submission, he relies on the decision rendered by the Hon’ble Apex Court reported in **2017 (2) SCC 178 (State of Bihar vs. Rajballav Prasad)**.

Further Mr. G. Riba, learned counsel for the respondent No.2 submitted the FIR was lodged on 19.05.2023 and he got arrested only on 03.06.2023 as the accused was absconding and avoiding police arrest. Thus, there is probability of absconding, if he is granted the privilege of regular bail.

In reply to the said submission, the learned counsel for the applicant has submitted that he was not aware of lodging of the FIR on 19.05.2023 and on

20.05.2023 he took his wife for medical treatment and he was not absconding at all and in this context he also furnished one copy of the medical document of his wife, who is still under treatment. Apart from that he also furnished a copy of another medical prescription with the advice of the doctor on 16.10.2023. He also submits that his wife is also working as a casual employer in the Office of Deputy Commissioner and apart from that he is a permanent resident of the native locality and thus, there is no chance of absconding, if the accused is granted the privilege of regular bail.

So, from the submission of the respective counsel and from the record, it is the admitted position that prosecution evidence is already closed and case is at the stage of recording of statement of accused under Section 313 of Cr.P.C. Thus, probability of hampering and tampering of the evidence does not arise at this stage. Further, from the available medical document it also reveals that on very next day of lodging the FIR he was at Dibrugarh, Assam for treatment of his wife. Considering all these aspects of the case and also considering the length of detention, I find it proper to allow the accused to go on bail.

Accordingly, it is provided that on furnishing a bond of Rs. 30,000/- (Rupees thirty thousand) only with one surety of like amount to the satisfaction of the learned District & Session Court, Lower Subansiri, the accused namely, Sri Badra Chetry @ Rohan, be enlarged on bail, subject to the following conditions:

- (i) that the applicant shall not leave the jurisdiction of the learned District & Session Court, Lower Subansiri, without prior permission of the Court till disposal of the case. The accused shall appear before the Court on each and every date without fail.

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

**Comparing Assistant**