

GAHC040015392023



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

Case No. : BA/115/2023

Smti Nabam Anna Modi
Wife of Shri Philip Modi, resident of Rajiv Gandhi University Campus, PO and PS
Doimukh, District Papum Pare, Arunachal Pradesh. Mobile No. 7005867116

VERSUS

The State of AP and Anr.
represented by Public Prosecutor 2:Smti Kekyllombi
Age: 0
Occupation

Advocate for the Petitioner : Parswajyoti Das Nair

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 08-12-2023

The petitioner, **Smt, Nabam Anna Modi** has filed this bail application under Section 439 of the Criminal Procedure Code praying for granting regular bail to the alleged accused person, **Shri Philip Modi**, who has been arrested by Itanagar Woman Police on 25.09.2023 in connection with Itanagar Woman P. S. Case No. 93/2023, under Section 376 IPC read with Section 4 of POCSO Act,

2012.

2. The case in brief is that on 25.09.2023, one Smt. Kekyum Lombi, lodged a written FIR against the alleged accused Shri Philip Modi before the Officer-in-Charge of Doimukh Police Station, *inter alia*, alleging therein that on 24.09.2023 Dr. Philip Modi who is their neighbour had molested her minor daughter aged about 6 (six) years in his room when the victim went to their residence to play with her friend who is the daughter of the accused. She further alleged that the accused called the victim child in his room, undressed her, then he touched and licked her private parts and thereafter she was asked to leave the house. On the basis of the above written FIR, the Police has registered the above Police Station case under Section 376 IPC read with Section 4 of the POCSO Act, 2012 and the alleged accused was arrested on the same day i.e., on 25.09.2023 and since then, the accused is in the judicial custody.

3. The learned counsel for the petitioner, Mr. P. D. Nair, contended and submits that due to the quarrel between the informant and the accused their relation was bitter sour. But, the relation between children were still good with each other and the daughter of the informant used to come and play with the daughter of the accused person. On the fateful day of alleged incident, the daughter of the informant had come to the house of the accused in the morning hour as usual. The constant presence of the girl not only disturbed the daughter of the accused person to complete her homework but also disturbed the family of the accused from having breakfast. Therefore, the accused person had harshly asked the alleged victim to go to her house for breakfast. Thus, the girl left the house immediately assuming that the accused person had scolded her. However, as the informant who had enmity with the accused person took advantage of the tears of her daughter and painted a false picture with

concocted allegations against the accused person to satisfy their hatred and as such, the present allegation is completely baseless and lodged FIR on concocted story to harm the successful and peaceful family of the accused person.

4. The learned counsel for the petitioner further submits that earlier the petitioner had moved a bail application before the learned Special Judge (POCSO), Yupia praying for release of the accused person, however, the same has been rejected on 03.11.2023. Mr. Nair further submits that if the bail is not granted to the alleged accused at this stage, it will damage the career of the alleged accused on mere allegation and an irreparable loss and damage would be caused against the reputation of the accused person, if his innocence is established during the trial. Hence, prays for release of the alleged accused person on bail with any terms and conditions as this court may deem fit and proper.

5. On the other hand, the learned Additional Public Prosecutor, Ms. T. Jini, while vehemently objecting the bail to the accused person submits that the victim has given her statement before the IO of the case under Section 161 Cr.P.C and before the Magistrate under Section 164 Cr.P.C wherein she has reiterated what she has already stated before the I.O. of the case and as such, there is no reason to disbelieve the statement of the victim made against the alleged accused person. She further submits that there is no reason why the mother of the victim would give a false statement against the accused for molesting her daughter which would destroy her reputation who otherwise has entire career ahead of her, unless the accused had actually committed the said offence.

6. The learned Addl PP further submits while considering for granting bail, the court would satisfy itself certain points which have been enumerated in the

case decided by the Hon'ble Supreme Court reported in **(2007) 1 SSC 70**, and reiterated in the judgment and order reported in **(2005) 8 SSC 21** in the case of **State of U.P. and Amarmani Tripathi**, which is quoted herein below:

It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail

7. The learned Additional Public Prosecutor further submits that the case is still under active investigation, hence, prays for rejection of the bail petitioner at this stage.

8. Ms. L. Lombi, learned counsel appearing on behalf of the respondent No. 2/informant while reiterating the submission made by the learned Additional Public Prosecutor further submits that there is no enmity between the accused person and the informant as contended in the bail application. She further submits that the accused person is a highly influential person in the University where the informant is working as a kitchen assistance in the Girls Hostel of the University at Doimukh. She further submits that the influential capacity of the accused has already apparent from the fact that the other neighbours and the first I.O. of the case were acting in his favour. And because of such act of the IO, the informant had lodged complaint against her for being impartial in conducting the investigation, as a result, the authority has now changed the I.O. of the case. She further submits that the averments made by the petitioner in Paragraph-5 of the bail application is false as there is no argument over the

kitchen garden.

9. Heard Mr. P. D. Nair, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State and Ms. L. Lombi, learned counsel for the respondent No. 2.

10. As called for by this Court, the learned Additional Public Prosecutor has produced the Case Diary and I have perused the same.

11. Upon hearing the submission made by the parties and considering the nature and gravity of the allegation made against the alleged accused person for commission of the alleged offence against a minor victim and also considering that prima facie there is sufficient materials found against the accused person and as the case is still under active investigation, I am not inclined to grant bail to the accused person namely, **Shri Philip Modi**, at this stage. Accordingly, the bail application stands rejected.

Return the Case Diary immediately.

JUDGE

Comparing Assistant