

GAHC010001012023



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

Case No. : Bail Appln./65/2023

PIYAR ALI AND 2 ORS
S/O ABDUL HAI, R/O VILL-JALESWAR BILL, P.S.-LAKHIPUR, DIST-
GOALPARA, ASSAM

2: ABDUL HAI
S/O KHORITULLAH SK
R/O VILL-JALESWAR BILL
P.S.-LAKHIPUR
DIST-GOALPARA
ASSAM

3: ISHAR ALI
S/O LATE KHORITULLAH SK
R/O VILL-JALESWAR BILL
P.S.-LAKHIPUR
DIST-GOALPARA
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:JAHAN UDDIN
S/O LATE ABDUL HOQUE
VILL-MAYER CHAR PART-IV
P.O.-NAYER ALGA
P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 23.01.2023

Heard Mr. N.J. Dutta, learned counsel for the petitioners, Mr. R.J. Baruah, learned APP for the State and Mr. A.K. Khan, learned counsel appearing for the informant/ respondent no.2.

2. The petitioners who were arrested on 29.08.2022. They are facing trial in connection with Special (POCSO) Case No. 46/2022. The petitioner no. 1 is accused under Sections 341/365/376 IPC read with Section 4 of POCSO Act. The petitioner nos. 2 and 3 are accused of committing offence under Section 341/365/34 IPC read with Section 17 of POCSO Act. The said case was registered as GR Case No. 450/2022 arising out of Bilasipara PS Case No. 240/2022 under Section 341/366(A)/376/34 IPC read with Section 4 of POCSO Act. They are seeking regular bail under Section 439 CrPC.

3. The learned APP as well as the learned counsel appearing for the informant/ respondent no.2 has opposed the prayer for bail.

4. Perused the scanned copy of the case diary received from the court of learned Special Judge, Bilasipara. The case diary reveals that as per her statement made before the Court of learned Addl. Chief Judicial Magistrate,

Goalpara, the victim girl is aged about 16 years. She has made consistent statement under Section 161 as well as 164 CrPC to the effect that she was assaulted from the behind while going to school and she became unconscious and later on she came to know that the petitioners were involved in her assault and she was sexually assaulted by petitioner no.1, namely, Piyar Ali.

5. It is noted that the victim girl was allegedly assaulted and kidnapped on 02.02.2022 at about 10 AM while going to school. It appears that no FIR was lodged about the said alleged incident. On 11.02.2022, a complaint case was lodged by the father of the victim which was registered as CR Case No. 46/2022 before the Court of learned Chief Judicial Magistrate, Goalpara and based on the order of the said learned Court, Lakhipur PS Case No.50/2022 was registered, which was later on transferred and registered as Bilasipara PS Case No. 240/2022. The complaint case contains no statement as to when victim was recovered. However, when the victim was examined by the Medical Officer on 01.03.2022, she had made different projection of the incident than what was stated in the FIR submitted by the informant. As the trial is going on, the Court is refraining from narrating the statement of the victim made before the Medical Officer. Even the charge-sheet does not disclose the date when the victim came back to her own house. As per the charge-sheet, the place of occurrence could not be identified because the place of occurrence was in the open bank of river Brahmaputra for which the sketch map could not be prepared.

6. In the considered opinion of this Court, it is unlikely that the son raped the victim girl in the presence of his father and uncle and that too in a public place, which is an open bank of the river Brahmaputra.

7. Therefore, notwithstanding that the petitioner nos. 2 and 3 respectively the father and uncle of the main accused charged with the commission of abetment of the offence, for which the charge-sheet has been submitted under Section 341/365/376 read with Section 17 of the POCSO Act, the Court is of the considered opinion that the petitioner nos. 2 and 3 would be entitled to bail.

8. Hence, the Court is inclined to grant bail to the petitioner nos. 2 and 3, namely, Abdul Hai and Ishar Ali in connection with the aforesaid case on furnishing bail bond of Rs.1,00,000/- each with two suitable sureties of like amount to the satisfaction of the learned Special Judge (POCSO), Bilasipara. However, at this stage, the bail to the petitioner no.1, namely, Piyar Ali is refused. The bail to the petitioner nos. 2 and 3 is granted on the following conditions:

- (1) The petitioner nos. 2 and 3 shall make themselves available to the police or any other investigating agency or Court in the present case as and when require.
- (2) The petitioner nos. 2 and 3 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses.
- (3) The petitioner nos. 2 and 3 shall not obstruct the smooth progress of the investigation/ trial.

- (4) The petitioner nos.2 and 3 shall not misuse their liberty in any manner.
- (5) The petitioner nos. 2 and 3 shall not jump over the bail.
- (6) The petitioner nos. 2 and 3 shall appear without fail on all dates of the trial and in the event they cannot appear for good reasons, they would make sure that they are represented by their learned counsel and they would also give an undertaking that they would not dispute their own identity or the identity of the witnesses which were examined in their absence.

9. In the event of default in appearance, it would be open to the learned trial Court to issue NBWA to compel appearance of the petitioner nos. 2 and 3.

10. None of the observations made herein shall be constituted as an opinion of the Court on merit and the trial Court shall not be influenced with any of the observation made herein in course of the trial.

11. This bail application stands disposed of.

12. Return the scanned copy of the case diary.

JUDGE

Comparing Assistant