

GAHC010001332023



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

Case No. : Bail Appln./32/2023

MOSSABBIR ALOM @ MOSABBIR ALOM
S/O UMOR ALI, R/O VILL-MESNAKUTI, P.S.-BILASIPARA, DIST-DHUBRI,
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR J I MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 27.01.2023

Heard Mr. J. Islam, learned counsel for the accused-petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973, the accused-petitioner viz. Mossabbir Alom @ Mosabbir Alom has prayed for his release on bail in connection with Sapatgram Police Station Case no. 103/2022, registered for offences under Sections 448/376, Indian Penal Code [IPC] for the second occasion after rejection of the earlier bail application, B.A. no. 3303/2022 by order dated 16.12.2022.

3. The accused-petitioner was arrested and produced before the Court of learned Sub-

Divisional Judicial Magistrate [M], Bilashipara on 01.11.2022. On being so produced, he was remanded to custody and since 01.11.2022, the accused petitioner is in custody.

4. In the First Information Report [FIR] lodged on 31.10.2022, the informant has inter alia alleged that the accused-petitioner intruded inside the room of her daughter, aged about 18 years, in the night intervening 30.10.2022 and 31.10.2022. Thereafter, by hiding underneath the bed in the bedroom of the informant's daughter and after the informant's daughter went to sleep, the accused-petitioner committed rape upon her forcefully after gagging her mouth with a cloth. Later on, when the grandfather saw him, the accused-petitioner was caught red handed by the people of the locality. The victim in her statements recorded under Section 161, CrPC as well as Section 164, CrPC has supported the version in the FIR. According to the statements of the eye witnesses, the accused-petitioner was caught hold of by few of the witnesses. However, the medical examination report of the victim, done on 31.10.2022, has not reported any external injury. The medical examination report has opined that the result is not consistent with recent sexual assault/intercourse.

5. The materials in the case diary go to indicate that the investigation has progressed with sufficient extant. However, a report from the Forensic Science Laboratory [FSL] is awaited. Considering extent of progress made in the investigation till date and the fact that the accused-petitioner is in custody for 87 days since 01.11.2022, this Court is of the considered view that further custodial detention of the accused-petitioner is not necessary for the purpose of carrying out further investigation of the case and his release on bail, at this stage of investigation, is unlikely to bring any adverse effect in the further investigation of the case, provided he continues to extend his assistance and co-operation in the further investigation of the case.

6. Accordingly, it is directed that the accused-petitioner shall be released on bail on furnishing a bail bond of Rs. 50,000/- with two local sureties of the like amount to the satisfaction of the learned Sub-Divisional Judicial Magistrate [M], Bilashipara, subject to the conditions that :-

[i] the accused-petitioner shall co-operate with the investigation and make himself available for interrogation whenever required by the Investigating Officer [I.O.] of the case;

[ii] the accused-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

[iii] the accused-petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

[iv] the accused-petitioner shall maintain law and order and he shall not commit an offence similar to the offence of which he is accused, or of the commission of which he is suspected; and

[v] the accused-petitioner shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge sheeted in the case.

7. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant