

GAHC010002282023



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

Case No. : Bail Appln./68/2023

MAZAHARUL ISLAM
S/O JAYNAL ABDIN
R/O KASHORI, P.S. JURIA
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 23.01.2023

Heard Mr. F.Haque, learned counsel for the petitioner as well as Mr. D.D.Gogoi, learned counsel for the State.

2. The petitioner, who was arrested on 26.11.2022 in connection with Juria P.S. Case No.238/2022 corresponding to G.R. No.1778/2022 under Section

363/376 of IPC read with Section 4 of POCSO Act read with Section 11 of the Prohibition of Child Marriage Act, 2006, is seeking regular bail under Section 439 Cr.PC.

3. The learned Addl. PP has produced the case diary and opposed the prayer for bail on the ground that on the date of the incident, i.e., on 02.07.2022 the victim was allegedly raped by the petitioner when she was 16 years of age. It is submitted that after the informant's daughter was raped, the villagers attending the village mel had compromised the matter between both the parties. But on 23.05.2022, the second party/accused no.1 Mazaharul Islam married another lady for which the victim consumed poison. The victim was then admitted at Nagaon Civil Hospital for treatment.

4. On a perusal of the case diary, the Court finds two circumstances which is in the opinion of the Court should be brought to the notice of the Superintendant of Police concerned so that the said authority can examine while monitoring the case in his ordinary course of duty. Firstly, the FIR does not contain any date when the alleged kidnapped or sexual assault on the victim was made. Secondly, as per the FIR, the victim had consumed poison and she was admitted to the hospital on 28.05.2022 and released on 31.05.2022. However, the case diary produced contains another medical prescription dated 23.05.2022, issued by one doctor Tafazzal Hussain, B.A.M.S, who has mentioned in his prescription that it was suspected case of poison. The crime was not immediately reported and the doctor had released the victim and subsequently the victim appears to have been admitted in hospital on 28.05.2022 and discharged on 31.05.2022 but in the discharge certificate there is no finding that it was the case of poisoning.

5. In view of the said circumstances as indicated above, and moreover, as the

case diary reveals that the victim had refused to undergo any medical examination to determine if she was sexual assaulted, the Court is of the considered opinion that the petitioner entitled to be released on bail. Accordingly, the Court is inclined to release the petitioner on bail on furnishing bail bond of Rs.2,00000/- (Rupees two lakh only) with two sureties each of the like amount to the satisfaction of the learned Special Judge (POCSO) Nagaon. Bail is granted on the following condition:

- (1) The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when require.
- (2) The petitioner 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. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses.
- (3) The petitioner shall not obstruct the smooth progress of the investigation/trial.
- (4) The petitioner shall not misuse his liberty in any manner.
- (5) The petitioner shall not jump over the bail.
- (6) The petitioner shall appears without fail on all dates of the trial and in the event he cannot appear for good reasons, he would make sure that he is represented by his learned counsel and he would also give an undertaking that he would not dispute his own identity or the identity of the witnesses which were examined in his absence.
- (7) In the event, petitioner fails to appear in the date fixed, it would be open to the learned Special Judge (POCSO) Nogaon, to issue NBWA to secure the

presence of the petitioner in trial.

6. The observations made herein, is only for the purpose of fail and to bring certain facts to the notice of the Superintendant of Police Nagaon. Therefore, none of the observations made herein should be treated as a final opinion of the Court on merit and therefore, the observations made in this order shall not prejudice the prosecution in course of trial.

7. The case diary returned.

8. The application stands disposed of.

JUDGE

Comparing Assistant