

GAHC010002792023



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

Case No. : Bail Appln./105/2023

ISMAIL HUSSAIN
S/O- LATE HASMAT ALI, R/O- VILL- KONORABEEL, P.S- JOGIGHOPA, DIST-
BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27-01-2023

Heard Mr. S. Nawaz, learned counsel for the petitioner as well as Mr. B.B. Gogoi, learned APP for the State.

2. The petitioner, namely, Ismail Hussain who was arrested on 30.11.2022, is seeking regular bail under section 439 Cr.P.C. in connection with Jogighopa P.S. case no.200/2022, under sections 376(3)/342/363/506 IPC read

with section 6 of POCSO Act.

3. The learned APP has produced the case diary and has opposed the prayer for bail on the ground that the medical report as well as statement made under section 164 Cr.P.C. of the victim has alleged sexual assault by the petitioner.

4. On a perusal of the case diary, it appears that there are two medical reports on record. First one is dated 20.01.2023 which refers to termination of pregnancy on 28.07.2021. The second medical report is of 30.11.2022 where the history of forceful sexual assault on 24.07.2022, 25.07.2022 and 26.07.2022 by the petitioner is recorded.

5. It is observed from the final report dated 07.10.2022 in connection with Jogighopa P.S. case no.363/2021 that in the said case the father of the victim, namely, Abul Hussain had lodged the FIR on 05.10.2021, apparently accusing the petitioner of sexual assault on his same minor daughter. However, after investigation the said case resulted in submission of final report, exonerating the petitioner of the accusations.

6. The learned counsel for the petitioner has produced a certified copy of the deposition of the victim girl recorded on 01.08.2022 before the Judicial Magistrate First Class, North Salmara, Abhayapuri in connection with Jogighopa P.S. case no.363/2021. The said statement is quoted herein below:

*“FORM OF RECORDING DEPOSITION
THE STATEMENT OF VICTIM U/S 164 Cr.P.C.*

Aged about 17 years taken in oath of solemn affirmation under provision of the Indian Oaths Act X of 1978, before me, Sri Devabrata Kalita, JMFC, North Salmara at Abhayapuri.

This 1st day of August, 2022.

My name is Alifa Begum

Wife of Abul Hussain

I reside at present in Borghola Part-II

Bongaigaon

P.S. Jogighopa District:

where I am a dependent

On Oath,

The first informant is my father.

I know the accused, Ismail Hussain, as he happens to be my brother-in-law by relation.

I was in a love relation with one Sariful Hussain and my father was against the said relation and he used to rebuke me often. As such, I went to stay in the house of my elder sister, Jolema Khatun (Wife of Ismail Hussain) and thereafter they shifted me to a rented house and also asked me to train myself at a computer centre.

Ismail Hussain never abducted or kidnapped me. I left the house of my father on my own free will.

I have nothing more to depose."

7. As already indicated above, the incident of sexual assault, as per the medical report, was during the time when the previous case was being investigated, being Jogighopa P.S. case no.363/2021 and although the victim was examined in the said case on 01.08.2022, but she had not narrated about any sexual assault committed upon her on 24.07.2022, 25.07.2022 and 26.07.2022. Under such circumstances, the Court is of the considered opinion that the further custodial interrogation of the petitioner is not required and hence, the Court is inclined to release the petitioner, namely, Ismail Hussain on bail on furnishing a bail bond of Rs.1.00 lakh (Rupees one lakh only) with two solvent sureties of like amount to the satisfaction of the learned Special Judge (POCSO), North Salmara, Abhayapuri. Out of the two bailors, one should offer his/her immovable property as security for grant of bail.

Bail is granted on the following conditions:

1. The petitioner shall appear before the Court in the present case on all the dates fixed for trial.
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 witness.
3. The petitioner shall not obstruct the smooth progress of the trial/ investigation.
4. The petitioner shall not misuse his liberty in any manner.
5. The petitioner shall not jump over the bail.
6. The petitioner shall once again appear before the IO once in 15(fifteen) days and he shall continue to appear once a month till his personal appearance is dispensed with or charge sheet is submitted, whichever is earlier.
7. If the petitioner is found involved in any similar offence, it would be open to the IO to move the jurisdictional Court and apply for cancellation of bail.
8. Case diary is returned.
9. The application stands disposed of.
10. The certified copy of the deposition made on 01.08.2022 by the victim

girl in connection with Jogighopa P.S. case no.363/2021 is retained on record.

JUDGE

Comparing Assistant