

GAHC010005572023



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

Case No. : Bail Appln./121/2023

BASUDEV MANDAL@PRASENJIT@BHASHADEV MONDAL
S/O- NIKHIL MANDAL, R/O- VILL- GHATPOTA GAON, P.O. MAJORBARI, P.S.
SILAPATHAR, DIST.- DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P.,ASSAM

Advocate for the Petitioner : MR A ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 25.01.2023

Heard Mr. P.K. Bhuyan, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned APP appearing for the State.

2. The petitioner, namely, Basudev Mandal @ Prasenjit @ Bhashadev Mondal, who was arrested on 19.08.2022, is seeking regular bail under section

439 Cr.P.C. in connection with Silapathar P.S. Case No. 150/2022, under sections 457/376 IPC, read with section 4 of the POCSO Act.

3. The learned counsel for the petitioner has submitted that the petitioner has been in custody for about 160 days and therefore, considering the length of detention, prayer for bail is made. It is also submitted that the relationship between the petitioner and the victim is consensual relationship. It is also submitted that the victim is a major girl.

4. The learned APP has referred to the materials available in the scanned copy of the case diary, which was called for from the Court the learned trial Court and has opposed the prayer for bail.

5. On perusal of the case diary, it appears that the alleged incident of rape of the victim was of 12.08.2022. As per the birth certificate available in the case diary, the victim was born on 03.11.2006 and therefore, on the date of alleged incident, the victim girl was minor. The investigation carried out so far reveals that the petitioner had forcibly taken out the victim from her home by 200 meters and raped her.

6. In view of the nature of incriminating materials available against the petitioner, notwithstanding the length of detention, the Court is not inclined to release the petitioner on bail.

7. However, it is noted that charge-sheet against the petitioner was filed on 30.09.2022 and the case was fixed on 14.10.2022 for furnishing copy. On the said date, the Presiding Officer was on leave, accordingly, the case was fixed on 28.10.2022 for furnishing copy. On the said date, copies were furnished to the petitioner-accused and the case was fixed on 11.11.2022 for consideration of charge. On 11.11.2022, 19.11.2022, 03.12.2022, 17.12.2022,

31.12.2022, charge could not be framed. On 04.01.2023, on the prayer of the petitioner, legal aid counsel was appointed to defend him and the case was fixed on 18.01.2023 for hearing on consideration of charge. On 18.01.2023, the Presiding Officer was on leave and therefore, the case is now fixed on 30.01.2023 for hearing on consideration of charge. Therefore, the Court finds that there is an inordinate delay in the framing of charge. Accordingly, the Court is inclined to request the learned Special Judge, Dhemaji to expeditiously conclude the hearing of the framing of consideration of charge taking into consideration that the petitioner has been in custody for last 160 days and expeditiously take steps for passing appropriate orders.

8. The petitioner is permitted to produce certified copy of this order before Special Judge, Dhemaji to bring the order to the notice of the said learned Court.

9. Application stands disposed of.

JUDGE

Comparing Assistant