

GAHC010006062023



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

**Case No. : Bail Appln./123/2023**

KAUSHIK BORO  
S/O- SONARAM BARO, PERMANENT R/O- VILL- GERUA, P.S. KALAIGAON,  
DIST.- UDALGURI, ASSAM

VERSUS

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

2:SRI PRABHAT BORO  
S/O- BHADRA KANTA BORO  
R/O- BONGAON  
P.S. KALAIGAON  
DIST.- UDALGUR

**Advocate for the Petitioner : MR M HOQUE**

**Advocate for the Respondent : PP, ASSAM**

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

**ORDER**

**Date : 17.02.2023**

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard  
Mr. M.P. Goswami, learned Addl. P.P. for the State.

2. The petitioner, namely, Kaushik Baro, who was arrested on 15.08.2022, and remanded on 16.08.2022 in connection with Kalaigaon P.S. Case No. 72/2022 under Sections 376(3) IPC read with Sections 4/6 of the POCSO Act, is seeking regular bail under section 439 Cr.P.C. The said case is being tried before the learned Court of Special Judge, Udalguri.

3. The learned counsel for the petitioner has submitted that the petitioner has been in custody for 185 days and there is no chance of early trial because as on 19.01.2023, charge has not yet been framed.

4. The learned counsel for the petitioner has also submitted that there is every possibility that the family of the petitioner and the victim may arrive at an agreement to solemnize their marriage. Hence, it has been submitted that the petitioner is ready and willing to abide by any condition that may be imposed by this Court in the event of grant of bail.

5. The learned Addl. P.P. has perused the scanned copy of the case diary received from the learned trial Court and has opposed the prayer for bail.

6. As per the scanned copy of the order-sheet, charges has been framed against the petitioner by order dated 19.01.2023 and as per order-sheet dated 02.02.2023, three PWs including the victim were examined, cross-examined and discharged.

7. As per the prosecution case, the age of the minor victim was recorded in the school certificate as 20.05.2007 and therefore, she is still a minor, aged about 15 years 9 months. The statement of the victim recorded under Section 161 and 164 Cr.P.C. are consistent in respect of sexual assault

committed on her by the petitioner on two occasions on promise to marry. Her statement is also consistent in her evidence recorded by the Court as PW-2. It is also the case of the prosecution that in the meanwhile the minor victim has also given birth to a girl child.

8. It would also be relevant to quote the provision of Section 436A Cr.P.C., which is as follows:-

**“436A. Maximum period for which an under trial prisoner can be detained.-** *Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:*

*Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:*

*Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*

*Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”*

9. It would also be appropriate to refer to the decision of the Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation*, AIR 2022 SC 3386, wherein it is provided that “Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

10. In the present case, the petitioner is charged of committing offence punishable under Sections 376(3) IPC read with Sections 4/6 of the POCSO Act, where the punishment is not less than 20 years but which may extend to the remainder of his natural life and shall also be liable to fine. Therefore, following the ratio laid down in the case of *Satender Kumar Antil (supra)*, as well as the provision of Section 436A Cr.P.C., the petitioner having been incarcerated for a period of 185 days, has not become entitled to be released on bail.

11. This application for bail is rejected.

12. Nothing contained in this order shall prejudice any side during trial.

13. The Registry shall not issue any certified/uncertified copy of any part of the scanned copy of the record received from the learned trial Court. The Court Master shall destroy the statement of the minor victim recorded under Section 161 and 164 CrPC and also as PW-2.

**JUDGE**

**Comparing Assistant**