

GAHC010010632023



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

Case No. : Bail Appln./192/2023

AZIZ KHAN
S/O- MURAD KHAN, R/O- 46, KAYAM KHANI MOHALLA, VILL- NOSAR, P.O.
DIDWANA, DIST.- NAGOUR, RAJASTHAN, PRESENTLY RESIDING AT
BIJOYNAGAR ICE FACTORY, ISLAMPUR, PIN- 781122

VERSUS

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

Advocate for the Petitioner : MR. D K JAIN

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE MALASRI NANDI

03-02-2023

This is an application made under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Aziz Khan**, in connection with **Palasbari P.S. Case No.470/2022**, registered under Sections **376 AB** of the Indian Penal Code read with **Section 4 of POCSO Act**.

Heard Mr. D.K. Jain, learned counsel for the petitioner. Also heard Mr. R.R.

Kaushik, learned Additional Public Prosecutor, Assam for the Respondent State.

Case diary produced has been perused including the statement of the victim recorded under Section 164 of the Code of Criminal Procedure.

The brief facts of the case is that, on 14.12.2022, an FIR was lodged by the informant before the Palasbari Police Station to the effect that on the same day the accused took away the daughter of the informant to his room who was playing in the house by offering her chocolate, chips, etc. and also offered her alcohol to drink. The accused also showed her obscene pictures/movies on his laptop and touched her private parts. When the informant did not find her daughter at home, they were in search of her daughter and found her daughter in an objectionable position in the house of the accused-petitioner. On the basis of the above, the Palasbari Police Station registered the aforementioned case under Section 376 AB read with Section 4 of the POCSO Act.

Mr. Jain, learned counsel for the petitioner has submitted that the petitioner has been in jail hajot for last 51 days. It has also been submitted that the petitioner has a daughter like the victim. It is also submitted that the petitioner did not commit any offence, as alleged in the FIR. He is a local person and there is no chance of his absconding, if he granted the privilege of bail.

On the other hand, Mr. Kaushik, learned Additional Public Prosecutor has vehemently opposed the prayer for grant of bail to the accused petitioner. He has submitted that from the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, it clearly appears that the petitioner is involved with the offence, as alleged against him and, as such, bail may not be granted to him.

I have considered the submissions advance by the learned counsel for the

parties and also perused the bail application and the case diary produced before the Court including the statement of the victim recorded under Section 164 of the Code of Criminal Procedure.

It appears from the case diary that the petitioner is a neighbour of the victim and when the accused called the victim, she voluntarily accompanied him to his house. The victim in her statement recorded under Section 164 of the Code of Criminal Procedure stated that the accused/petitioner showed her some obscene pictures and movies in his laptop. He also removed her undergarments and had also kissed her. The other witnesses examined by the investigating officer during investigation also in their statements have supported the statement made by the victim.

In view of the incriminating materials available in the case diary as well as in the facts and circumstances of the case, this is not a fit case for grant bail to the petitioner and the same stands rejected.

The bail application stands disposed of accordingly.

Return the case diary.

JUDGE

Comparing Assistant