

GAHC010010842023



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

**Case No. : Bail Appln./208/2023**

AJIJUL HOQUE  
S/O TALEB ALI  
R/O VILL- SUAPATA PT.V  
P.O. BILASIPARA  
P.S. BILASIPARA  
DIST. DHUBRI, ASSAM  
PIN-783348

VERSUS

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

2:NURU SK  
S/O SATTAR ALI  
VILL- FOUZDAR CHAR

P.O. CHAPAR  
P.S. CHAPAR  
DIST. DHUBRI  
ASSAM  
PIN-78337

**Advocate for the Petitioner : MR. M U MONDAL**

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

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

**ORDER**

**Date : 24.02.2023**

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also

heard Mr. M.P. Goswami, learned Addl. P.P. for the State.

2. The petitioner, namely, Ajijul Hoque, who was produced on 17.09.2022 in connection with Chapar P.S. Case No. 63/2019 under Sections 376/109 IPC read with Section 4 of the POCSO Act, is seeking regular bail under section 439 Cr.P.C. In the said case, charge-sheet no. 170/2022 dated 29.09.2022 was submitted and the case is now being tried as Special (POCSO) Case No. 50/2022, where charges has been framed under Sections 376/420 IPC read with Section 4 of the POCSO Act.

3. The learned counsel for the petitioner has submitted that there is no sign of an early trial of the case. It is also submitted that the medical report of the victim does not disclose any injury or recent sexual assault. It is also submitted that the petitioner was a juvenile and the said aspect be also considered. Accordingly, it is prayed that the petitioner be released on bail.

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

5. On a perusal of the scanned copy of the case diary, it appears that the victim, in her statement under Sections 161 and 164 Cr.P.C. has implicated the petitioner of forcefully kidnapping her in a car and sexually assaulting her. As per medical report, the radiological age of the minor victim girl is 14<sup>1/2</sup> to 15<sup>1/2</sup> years.

6. The victim was sexually assaulted on 19.02.2019 and she was rescued on the same day. However, the informant and other members of the victim had waited for a village meeting to settle the matter and therefore, the

FIR was belatedly lodged on 27.02.2019. The minor victim was medically examined only on 28.02.2019, and as per the medical examination report, the hymen of the victim girl was ruptured. Therefore, merely because the medical officer had opined that there was no sign of recent sexual intercourse, the accusation against the petitioner cannot be brushed aside, which is to be determined at the stage of trial. In the considered opinion of the Court, at the stage of consideration of prayer for bail, the medical examination report cannot be a ground to discard the prosecution case that the petitioner had sexually assaulted the minor victim girl.

7. In so far as the plea of juvenility of the petitioner is concerned, it appears from the scanned copy of the case record that the petitioner has failed to disclose in this bail application that the said plea was raised before the learned trial Court and the learned Special Judge, Bilasipara, by an order dated 06.12.2022, had rejected the said plea. The said order has attained finality. Hence, the plea that the petitioner was juvenile on the date of occurrence deserves to be and is accordingly, rejected.

8. In respect of the submissions that there is no chance of an early trial, it may be mentioned that the scanned copy of the order-sheet of the learned trial Court reveals that charge-sheet was submitted in this case on 20.12.2022, and cognizance of the offence was taken by order dated 20.12.2022. The charges under Sections 376/420 IPC read with Section 4 of the POCSO Act were framed vide order dated 03.01.2023. It may be mentioned that the Court was informed at the Bar that advocates are boycotting the Court of Special Judge (POCSO), Bilasipara. If that be the case, the petitioner on bail as delay is not attributed to the Court. Moreover, when charges were framed by order dated 03.01.2023, it cannot be claimed that there has been any delay in

the progress of trial. It is noted that although the FIR was lodged on 27.02.2019, but the petitioner could only be apprehended and/or produced on 17.09.2022. Thus, the delay, if any, in the progress of trial appears to be attributed to the petitioner.

9. Hence, in light of the investigation carried out so far, the Court is of the considered opinion that under the circumstances, the petitioner above named is not entitled to be released on bail. Accordingly, the prayer for bail is rejected at this stage.

10. Application is disposed of.

11. 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.

**JUDGE**

**Comparing Assistant**