

GAHC010013352023



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

Case No. : Bail Appln./254/2023

ACHCHA LAL MAHATO
S/O- LT. HIRAMON MAHATO, PERMANENT R/O- VILL- SAJNA, NEAR SHIV
MANDIR, P.S. JANATA BAZAR, DIST.- CHAPRA, BIHAR, PRESENTLY
RESIDING AT AMERICAN COLONY, CHANAPATTY, P.S. JALUKBARI, DIST.-
KAMRUP (M), ASSAM

VERSUS

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

2:BIRU BHAGAT
S/O- GOPAL BHAGAT
R/O- PANDU
AMERICAN COLONY
CHANAPATTY
P.S. JALUKBARI
GHY
DIST.- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR P DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.02.2023

Heard Mr. P. Das, learned counsel for the petitioner. Also heard Mr. Bhaskar Sarma, learned APP appearing for the State and Mr. S. Jafri, learned counsel appearing for respondent no.2.

The petitioner, who was arrested on 09.12.2022, is seeking regular bail under section 439 Cr.P.C. in connection with Jalukbari P.S. Case No. 695/2022 under sections 376 AB IPC read with Section 6 of POCSO Act.

The learned APP has produced the case diary and opposed the prayer for bail.

Pursuant to order dated 10.02.2023 passed by this Court, the respondent no.2 has filed an affidavit on 13.02.2023 which was sworn on 13.02.2023, wherein the following statement is made in paragraph 3 and 4:

“3. That as regard to the statements made in paragraph no. 5, 6 and 7 of the instant petition, I beg to state that the above named accused person is a very known person to me and my family and we have been residing together as neighbors. Being a neighbor my daughter used to go to the house of the accused and play there. On the day of incident when my wife called me over phone asked to come over, when I went there I saw my daughter was crying and my wife narrated a story that the accused misbehaved with my daughter and my daughter came out crying from his house. My daughter was crying and due to which I could not have conversation with her. Thereafter I went to the house of the accused and upon reaching there I confronted the accused and asked him about the reason as to why my daughter came out crying from his house. When the accused did not reply properly, on the next date as my daughter was crying holding her thigh, with an idea of what incident could have happened, I lodged an FIR before the Jalukbari Police Station.

4. *That I beg to state that after lodging of the FIR and recording of the statement of my daughter, when I properly asked my daughter about the incident, she narrated the story that the accused pinched into her thigh. As my daughter is very minor and was only 4 and 6 months old, there remains miscommunication and misrepresentation of the actual incident that took place."*

As the informant has resiled from the contents of the FIR, the Court is inclined to grant bail to the petitioner, namely, Achaha Lal Mahato in connection with the aforesaid case on furnishing bail bond of Rs.50,000/- with one suitable surety of like amount to the satisfaction of the learned Special Judge (POCSO), Guwahati. The bail is granted on the following conditions:

1. The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.
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 investigation/trial.
4. The petitioner shall not misuse his liberty in any manner.
5. The petitioner shall appear before the I/O within 10 (ten) days from the date of his release.

Having regard to the provision of Section 22 of the POCSO Act, 2012 where punishment for false complaint and false information was provided for,

the I.O. of the Jalukbari P.S. Case No. 695/2022 shall take into consideration the provision of Section 22 of the POCSO Act, 2012 and take an appropriate call in the matter in accordance with law insofar as the respondent no.2, namely, Biru Bhagat is concerned.

The learned APP shall communicate the downloaded copy of this order to the I.O.

This application stands disposed of.

Case diary is returned.

JUDGE

Comparing Assistant