

GAHC010018252023



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

Case No. : Bail Appln./369/2023

UDDHAB KUMAR BHARALI
S/O LT. LALIT CHANDRA BHARALI R/O KB ROAD WARD NO. 11 BHAIRAB
NAGAR P.S. NORTH LAKHIMPUR DIST. LAKHIMPUR ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

27.02.2023

Heard Mr. K. Sarma, learned counsel for the accused and Mr. B. Sarma, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Uddhab Kumar Bharali, who has been languishing in jail

hazot since 21.01.2022, in connection with the North Lakhimpur P.S. Case No. 1332/2021, under Sections 354/376[i]/376[j]/376[k] of the IPC read with section 6 of the POCSO Act, corresponding to special case No. 117/2021 pending before the court of learned Special Judge, POCSO, North Lakhimpur, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by one Smti Bichitra Dutta, Secretary, District Legal Services Authority, Lakhimpur on 17.12.2021. The gist of allegation against the accused is that being the foster father he has subjected one minor girl, Smti X [name withheld], to sexual harassment while she was under his foster care.

4. Mr. K. Sarma, learned counsel for the accused submits that this is the second bail application preferred by the accused and the first one was rejected by this court vide order dated 22.11.2022, in BA No. 2248/2022, on the ground of seriousness of the offence, which according to Mr. Sarma, is not a just ground to dismiss the bail petition. In support of his submission Mr. Sarma, has referred two decisions of Hon'ble Supreme Court in **Sanjay Chandra vs. Central Bureau of Investigation**, reported in **[2012] 1 SCC 40**, and also in the case of **Sagar Tatyaram Gorkhe and another vs. State of Maharashtra**, reported in **[2021] 3 SCC 725**. Mr. Sarma further submits that the accused is behind the bar for more than a year and the trial is still going on and out of 11 cited witnesses, 5 have been examined and another 6 witnesses are yet to be examined and there is no certainty as to when the trial will be completed, and till then the accused cannot be kept behind the bar and therefore, it is contended to allow this petition.

5. On the other hand Mr. B. Sarma, learned Addl. P.P. has vehemently opposed the petition. Referring to the materials on the record of the learned court below Mr. B. Sarma submits that the victim girl was below 11 years at the time of offence and that she has implicated the accused with the offence charged and that the accused is an influential person and that in the event of releasing him, he may influence the

witnesses and as the offences are heinous offence, and the length of detention cannot be a ground for releasing the accused on bail. Mr. Sharma further submits that 6 material witnesses are yet to be examined, and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the judgments of the Hon'ble Supreme Court referred by Mr. K. Sarma, learned counsel for the accused.

7. From the status report of the learned court below, it appears that the accused surrendered before the learned court below on 21.01.2022, and charge sheet was submitted on 26.03.2022, citing as many as 11 numbers of witnesses. Out of 11 numbers of witnesses, 5 witnesses have already been examined. But, cross-examination of two witnesses i.e. Pw2 and Pw5 are yet to be completed, as the same was reserved, and there remains to be examined 6 more witnesses.

8. Further, it appears that this court was pleased to dismissed the first application, vide order dated 22.11.2022, in BA No. 2248/2022, after perusing the record of the learned court below. It also appears that the victim girl has implicated the accused with the offence charged, as submitted by Mr. B. Sarma, learned Addl. P.P.

9. That, perusal of the judgments of the Hon'ble Supreme Court, referred by Mr. K. Sarma, learned counsel for the accused, reveals that the background facts of the said decisions are quite different from the case in hand and as such the same have to be treated to be restricted to its own facts. Be it mentioned here that the said cases were registered under the Prevention of Corruption Act. And the case in hand is registered under POCSO Act apart from offences under the IPC.

10. Having considered the facts and circumstances on the record, as revealed from the record of the learned court below, and also considering the submission of learned

counsel for both the parties, this court is of the view that the ground assigned by the learned counsel for the accused for entertaining this second application, appears to be not at all satisfactory. Besides, six material witnesses are yet to be examined and two witnesses are yet to be cross-examined. Therefore, balancing the right of the accused as well as of the victim and the societal interest, this court is of the view that this is not a fit case where the privilege of bail can be extended to the accused, at this stage. Accordingly, the petition stands dismissed.

11. However, the learned court below is directed to complete the trial within a period of 3 months from today, without being influenced by any of the observations made by this court hereinabove, as the same are made only for the purpose of disposing of this bail application. Further, it is provided that the learned court below shall, if necessary take recourse to section 309 of the Cr.P.C.

12. In terms of above, this BA stands disposed of.

13. At this stage, Mr. K. Sarma, learned counsel for the accused prayed for granting liberty to the accused to approach the learned court below for bail. Accordingly, it is provided that liberty will remain with the accused to approach the learned court below for bail.

JUDGE

Comparing Assistant