

GAHC010032372023



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

**Case No. : Bail Appln./546/2023**

SHAHIN JAMAL @ SAHIN JAMAL  
S/O LATE NOOR AHMED,  
VILL.- UDALI TINIALI BAZAR,  
P.O.- TINIALI BAZAR,  
P.S.- LANKA,  
DIST.- HOJAI, STATE- ASSAM.

VERSUS

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

**Advocate for the Petitioner : MR. D KALITA**

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

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

16.03.2023.

Heard Mr. D. Kalita, learned counsel for the accused and Mr. P.S. Lahkar, learned Addl. P.P. for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Shahin Jamal @ Sahin Jamal, who has been languishing in jail hazot since 01.11.2022, in connection with the Lanka P.S. Case No. 450/2022, under Sections 354(D)(1)(i)/448/376(3) of the IPC, read with Section 4 of the POCSO Act, for granting bail.

The said case has been registered on the basis of an FIR lodged by informant Smti. X (name withheld) on 31.10.2022, to the effect that accused Shahin Jamal @ Sahin Jamal used to harass her while she used to attend the school at Tiniali, and about 5 months back he committed rape upon her in her house, on three occasions and took video and photographs of the same while her family members were absent and out of fear she has not disclosed the matter to anyone else and thereafter, the accused make naked photographs and the video viral in Whatsapp and social media.

Mr. Kalita, learned counsel for the accused submits that this is the second bail application and the first one was rejected by this court, vide order dated 16.12.2022, in BA No. 3322/2022, after perusing the case diary. Mr. Kalita further submits that this second application is preferred on the ground of change of circumstance i.e. submission of charge sheet after completion of investigation. Mr. Kalita further submits that the accused is languishing in jail hazot for last 135 days and that investigation has already been completed and the I.O. has submitted charge sheet against the accused and that the accused is ready to face the trial and therefore, contended to allow the petition.

On the other hand, Mr. P.S. Lahkar, learned Addl. P.P., Assam has vehemently opposed the petition and referring to the materials collected in the charge sheet and also referring to the statement of the victim recorded under Section 164 of the CrPC, Mr. Lahkar submits that there are sufficient

incriminating materials against the accused and that there is possibility of misusing the liberty, if bail is granted at this stage and therefore, Mr. Lahkar contended to dismiss the petition.

Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scan copy of the record of the learned Court below and also the statement of the victim girl recorded under Section 164 of the CrPC.

It appears that investigation of the case has already been completed and charge sheet has been laid against the accused under Sections 354(D)(1)(i)/448/376(3) of the IPC, read with Section 6 of the POCSO Act. Further, it appears that the victim girl in her statement under Section 164 as well as under Section 161 of the CrPC, has implicated the accused with the offence alleged in the FIR. It also appears that the accused has committed the offence by threatening the victim girl and he also threatened her not to disclose the matter to anybody else. The charge sheet has been submitted against the accused after completion of investigation. Trial is yet to be started and the evidence of the victim girl is yet to be recorded and if the privilege of bail is granted to the accused at this stage, the possibility of influencing the victim girl and other prosecution witnesses cannot be ruled out.

Thus, considering above and also the nature and gravity of the offence and the punishment prescribed for the same and also balancing the right of the accused and also balancing the right of the victim as well as interest of the society, this Court is of the view that this is not a fit case to enlarge the accused on bail. Accordingly, this bail petition stands dismissed.

However, the learned Court below is directed to expedite the trial and

conclude the same within earliest possible time and if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the CrPC, without being influenced by any of the observation made herein above, as the same is made only for the purpose of disposing of the bail petition.

In terms of above, the bail application stands disposed of.

**JUDGE**

**Comparing Assistant**