

GAHC010033982023



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

Case No. : Bail Appln./582/2023

KADER ALI @ ABDUL KADER SK,
S/O. TOPIJUDDIN SK., R/O. VILL. CHOTO GIRAI PAR, P.O. BARKANDA, P.S.
BILASIPARA, DISTRICT- DHUBRI, ASSAM, PIN- 783348

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

31.03.2023

Heard Mr. M. I. Hussain, learned counsel appearing for the accused petitioner. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor for the State/respondent.

By this petition under Section 439 Cr.P.C., the petitioner, namely, **Kader Ali @ Abdul Kader Sk**, has prayed for grant of bail in connection with **Bilasipara**

P.S. Case No. 730/2020 u/s 341/325/34 of IPC R/W Section 8 of POCSO Act and the case was later on registered as Special (POCSO) Case No. 40/2022, U/S 448/376 IPC R/W Section 4 of POCSO Act.

The scanned copy of case record along with case diary, as called for, is placed before the Court.

Mr. M. I. Hussain, learned counsel appearing for the accused petitioner, submits that the accused has been languishing in jail for a prolonged period although the learned court framed charges under Sections 448/376 of the IPC read with Section 4 of the POCSO Act against him on 21.02.2023 and no prosecution witness is examined till date. Mr. Hussain further submits that if his detention is continued, he is certain to be deprived of proper defence which is a fundamental right of the prisoner.

Per Contra, Mr. B. Sarma, learned Additional Public Prosecutor, submits that the accused petitioner was named in the F.I.R. as the prime accused and thereafter, on completion of investigation, the police laid a charge-sheet, whereupon on being satisfied with the materials on the case diary, the learned trial court has framed the charges. Mr. Sarma further submits that in the case, the prosecution is yet to examine any witness including the victim girl.

The prosecution case reveals the allegation of commission of rape upon the victim by the accused petitioner.

It is noticed that the accused has been in judicial custody since 07.02.2023, that is, for 52 days.

A perusal of the case record reveals that the investigating officer, after completion of investigation, laid a charge-sheet under Sections 448/376 of the IPC read with Section 4 of the POCSO Act against the petitioner showing him as

absconder and another accused under Sections 341/325 of the IPC vide order, dated 07.11.2022 whereupon, the learned trial court issued summons for their appearance.

The case diary reveals that after commission of the alleged offenses, the accused remained untraced and the police could not apprehend him.

The record reveals that the learned trial court framed charges against the present accused and another as charge-sheeted vide order dated 21.02.2023. Thereafter, no witness including the informant and the victim girl is examined. There is a list of 6(six) prosecution witnesses in the charge-sheet. The case being pending at the stage of evidence of the prosecution witnesses, the stage of defence evidence is yet to come.

The case being of serious nature, where the victim girl, aged about 14 years, in her statements under Sections 161 and 164 Cr.P.C. has implicated the accused, this Court is of the opinion that if liberty of bail is granted to him, the trial of the case may likely to be adversely affected.

Accordingly, the bail application stands rejected.

However, the learned trial court is directed to expedite the trial of the case.

This disposes of the bail application.

JUDGE

Comparing Assistant