

GAHC010045192023



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

Case No. : Bail Appln./763/2023

AMIR ALI @ AMIR HAMZA
S/O BASED ALI
R/O VILL- BANDIA CHAPARI
P.S. MANGALDAI
DIST. DARRANG, ASSAM

VERSUS

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

2:NUR HUSSAIN
S/O ARMAN ALI
R/O KACHARIVETITOP
P.O. AND P.S. DALGAON
DIST. DARRANG
ASSA

Advocate for the Petitioner : MR M AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

17.03.2023

Heard Mr. M. Ahmed, learned counsel for the accused-petitioner and Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam for the State.

2. This bail application has been filed by the accused-petitioner namely, **Amir Ali @ Amir Hamza**, seeking bail in connection with **Dalgaon P.S. Case No. 428/2022** under Sections 366/34 of the IPC read with Section 4 POCSO Act. The accused-petitioner was arrested on 17.12.2022 and since then he has been in custody.

3. An FIR dated 21.11.2022 was lodged by one Md. Nur Hussain who was the father of the victim, alleging that the accused-petitioner has taken away the minor girl aged about 13 years. Pursuant to the efforts of the relatives, the girl was recovered. In connection with the FIR, the petitioner was arrested on 17.12.2022 and since then he has been in judicial custody.

4. The learned counsel for the accused-petitioner submits that he did not kidnap the girl rather the girl had eloped with him.

5. The case diary as called for has not received as is submitted by the learned Addl. Public Prosecutor, Assam. The learned counsel for the accused-petitioner submits that since the petitioner has been in custody since his date of arrest namely, 17.12.2022. He has completed the statutory period prescribed under law and therefore, he seeks to enforce his right under Section 167(2) of the Cr.P.C. and be enlarged on default bail as no charge-sheet has been filed till date. The learned counsel for the accused-petitioner submits that he will abide by all the conditions that may be imposed by this Court.

6. The learned counsels for the parties have been heard. The accused-petitioner was arrested in connection with Dalgaon P.S. Case No. 428/2022 under Sections 366/34 of the IPC read with Section 4 POCSO Act. Under Section 366 of the IPC, the punishment prescribe is for a term which may extend to 10 years and also be liable to fine. Under Section 4 of the POCSO Act, the punishment prescribe is imprisonment for a term which shall not be less than seven years but which may extend for life and also be liable to be fined. It is seen that the accused-petitioner has been arrested on 17.12.2022 which is not disputed by the learned Addl. Public Prosecutor, Assam. It is seen that the accused-petitioner has been in custody for 90 days and the learned Addl. Public Prosecutor, Assam has no instructions as to whether the charge-sheet in the meantime has been filed.

7. It is not in dispute at the bar that the statutory period of detention in respect of the contravention under Section 22(b) of the NDPS Act is 60 days. The petitioner has been in judicial custody from 12.06.2021 i.e., for 62 days, which is admittedly more than the statutory period for detention mandated. The learned counsel Addl. PP has submitted that no Charge-sheet has been filed as on date nor has any application been filed seeking extension of the period of detention as on date. As has been held in ***Rakesh Paul Vs. State of Assam***, reported in ***(2017) 15 SCC 67*** and ***M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence***, reported in ***(2021) 2 SCC 485*** when the accused applies for bail under Section 167(2) Cr.P.C. upon expiry of the statutory period, the Court must release him on bail forthwith. The rights of the accused-petitioner under Section 167 can also be enforced orally as has been held by the Apex Court in *Rakesh Paul (Supra)*. Considering the length of detention and considering the prayer made by the learned counsel for the accused-petitioner invoking his right under Section 167(2) of the Cr.P.C., the accused-petitioner is directed to be released on bail.

8. Accordingly, invoking the provisions of Section 167 Cr.P.C., this Court is of the view that the accused-petitioner is required to be released on bail as he has completed the mandatory period.

9. Therefore, the accused-petitioner, named above, in connection with the aforementioned case, shall be released on bail forthwith on furnishing a bail bond of **Rs. 20,000/- (Rupees Twenty Thousand only)** with two local sureties of like amount to the satisfaction of the learned **Special Judge, Darrang, Mangaldoi**, subject of course, to the following conditions.

(i) That the accused-petitioner shall appear before the Investigating Officer as and when required till the investigation is completed;

(ii) That the accused-petitioner shall not hamper or tamper with the investigation in any manner;

(iii) That the accused-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 the Court or to any police officer; and

(iv) That the accused-petitioner shall not move out the jurisdiction of the Dalgaon Police Station without obtaining written permission from the concerned Investigating Officer of the case.

10. If any of the conditions are found to be violated by the accused-petitioner, the Investigating Officer shall be at liberty to seek recall/cancellation of the bail granted to the accused-petitioner.

11. The bail application is allowed and disposed of.

JUDGE

Comparing Assistant