

GAHC010059012023



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

Case No. : Bail Appln./1015/2023

NIRMAL KALITA
S/O LATE HARAKANTA KALITA
R/O SALBARI NO. 1, PANCHATIRTHA PATH, HOUSE NO. 60, P.O. AND
P.S.NOONMATI, GUWAHATI-781020, DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 25.04.2023

Heard Mr. AK Jain, learned counsel for the accused petitioner as well as Mr. RJ Baruah, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Nirmal Kalita**, has prayed for grant of bail in connection with Sessions Case No. 102/2021 under Section

354/354A of IPC r/w Section 6/10/12 of POCSO Act arising out of All Women PS Case No.01/2021.

It is noticed that the accused petitioner is in judicial custody since 05.01.2021, that is, for 841 days.

The allegation in the FIR reveals sexual assault on the minor daughter of the informant by the present accused who is the husband of the informant.

The initial charges under Sections 354/354A of the IPC read with Section 12 of the POCSO Act framed against the accused petitioner on 02.08,.2021 were amended/ altered adding additional Sections of 6/10 of POCSO Act vide order, dated 15.03.2022 after appreciation of the evidence of 08 (eight) prosecution witnesses, out of 09(Nine) listed witnesses, was recorded granting liberty to both sides to further examine/cross-examine the witnesses in view of alteration of charges aforementioned. However, the parties have not re-examined or cross-examined the said witnesses.

It is noticed that thereafter, the investigating officer has also been examined and cross-examined as PW-9 on 12.05.2022 and thus, after conclusion of evidence of the prosecution side, the case is presently pending for statement of the accused under Section 313 CrPC.

A perusal of the evidence of the prosecution witnesses including that of the victim, who is stated to be a child on the date of alleged occurrence, it is revealed that there is ample incriminating material against the accused petitioner, subject, of course, to final outcome on a detail appreciation of evidence by the learned trial court.

Therefore, considering the length of detention only, this Court is of the opinion that if the liberty of bail is granted to the accused petitioner, who is a permanent resident under Noonmati P.S, the remaining part of trial of the case is unlikely to be adversely affected.

Therefore, it is provided that the accused petitioner, named above shall be released on bail of **Rs. 50,000/- (Fifty Thousand)** with 02(two) sureties of like amount to the satisfaction of the learned **Special Judge (POCSO Act), Kamrup (M), Guwahati**, subject to the following conditions- :

- (i) That the accused petitioner shall continue to appear before the learned trial Court on all the dates to be fixed from time to time till the case is disposed of; and

- (ii) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Any breach of the above conditions of bail shall render cancellation of the bail in accordance with law.

Be it mentioned that any observation made in this application shall have no bearing in the judicial discretion of the learned court below.

With the above directions, the bail application stands disposed of.

JUDGE

Comparing Assistant