

GAHC010078462023



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

Case No. : Bail Appln./1319/2023

BILLAL HUSSAIN
S/O BANIZ ALI VILL. DONGRA P.O. DHAKUA P.S. AND DIST. BARPETA
ASSAM PIN 781309

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

11.04.2023

Heard Mr. M.U. Mahmud, learned counsel for the accused petitioner. Also heard Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused petitioner, namely

Billal Hussain has prayed for grant of bail in connection **Special POCSO Case No. 146/2019** arising out of **Barpeta P.S. Case No. 2576/2018** u/s **365/34** of the IPC added Section **4** of the POCSO Act, pending in the Court of learned Addl. Sessions Judge-cum-Special Judge (POCSO Act), Barpeta.

The F.I.R., dated 30.11.2018, reveals the allegation that the accused petitioner on the ill advice of another co-accused kidnapped the minor daughter of the informant and kept her in an unknown place. Later on, when the accused persons were trying to take the victim to outside the state, the local people caught them red handed.

Mr. M.U. Mahmud, learned counsel for the accused petitioner, submits that the accused petitioner had been regularly appearing before the learned Court below and participating in trial. But, due to the outbreak of Covid-19, he failed to appear on some fixed dates and from 23.03.2021 to 07.07.2023 he was in Kerala for earning his livelihood and he informed his engaged counsel to file petitions on his behalf. Mr. Mahumd submits that due to such unavoidable circumstances, the petitioner failed to appear before the learned Court below for which NBWA was issued against him which was stayed by this Court for 10 days vide order, dated 23.03.2023, passed in Crl. Pet. No. 277/2023. Mr. Mahumd further submits that the accused petitioner is willing to participate in trial, but he being the sole bread earner of the family having old aged parents, he may be released on bail subject to any condition(s).

Mr. B. Sarma, learned Addl. P.P., submits that as the accused petitioner's case is of default in appearance and as he has now undertaken to be regular in appearance, he may be given a second chance for the purpose by granting the liberty of bail as prayed.

I have heard the learned counsel for both sides and considered the grounds cited in the petition along with the documents annexed thereto.

Perusal of the scanned copy of the order sheet of the learned Court below (Annexure-3) shows that earlier the accused petitioner was enlarged on bail by the Court of learned Special Judge (POCSO Act), Barpeta vide order, dated 02.02.2019, passed in Case No. 2576/2018. Thereafter, vide order, dated 21.11.2019, he was allowed to remain on previous bail. On 07.07.2022 as the accused was found absent without steps NBWA was issued against him fixing 30.07.2022 for appearance. This Court vide order, dated 23.03.2023, passed in Crl. Pet. No. 277/2023, directed the accused petitioner to appear before the learned Court below by suspending the NBWA issued against him. On 27.03.2023 and 31.03.2023, the bail application of the accused petitioner was rejected by the learned Court below.

Upon hearing the learned counsel for both sides as well as the averments made in the petition along with the documents annexed thereto, this Court is of the opinion that if the liberty of bail is granted to the accused petitioner, the ongoing trial into the case is unlikely to be adversely affected.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.40,000/- (Rupees Forty Thousand)** with one surety of like amount to the satisfaction of the learned **Addl. Sessions Judge-cum-Special Judge (POCSO Act), Barpeta** subject to the following conditions-

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

- ii) 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.

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

This disposes of the bail application.

JUDGE

Comparing Assistant