

GAHC010082682023



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

Case No. : Bail Appln./1590/2023

MD. RAJIB ALI
S/O AJAD ALI
R/O VILL- MEDA
P.S.SORBHUG
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE LEARNED PP, ASSAM

2:TOFAJUL ALI
S/O MD. KALJIRA ALI
R/O KAMALPUR GAON
P.S. SONAI
DIST. DHEMAJI
ASSA

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

30.05.2023

Heard Mr. A.R. Bhuyan, learned counsel for the accused petitioner as well as

Mr. B. Sarma, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioner, namely **Md. Rajib Ali** has prayed for grant of bail in connection with **Special (POCSO) Case No.65(JN)/2022** pending the Court of learned Special Judge, Dhemaji arising out of **Jonai P.S. Case No.35/2022** under Sections **366/376** of the IPC read with Section **4** of the POCSO Act, 2012 [**G.R. Case No.55/2022**].

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

The FIR reveals the allegation that the accused petitioner along another had kidnapped the daughter of the informant on 20.04.2022.

It is noticed that the accused petitioner has been in judicial custody since 01.09.2022, that is, for 272 days.

A perusal of the case record, it is revealed that the charge-sheet was submitted against the present accused under Sections 366/376 of the IPC read with Section 4 of the POCSO Act and against another namely, Md. Mannaf Ali under Section 366 of the IPC showing both of them absconder. Accordingly, after consideration of the materials on the case diary, the learned trial Court framed charges under Sections 366 of the IPC read with Section 6 of the POCSO Act against the accused petitioner. Thereafter, the victim girl has been examined. There is a list of 12(twelve) prosecution witnesses in the charge-sheet.

A perusal of the medical report shows that on 19.06.2022, that is, on the date of examination of the victim girl, there was no sign and symptom of external or internal injury or mark of violence over her body.

The case record along with the case diary prima facie indicate a close

relationship between the present accused petitioner and the victim girl which led to the alleged incident on 20.04.2022 at about 1.30 a.m. Her date of birth is 02.03.2005 and on the day of occurrence, she was aged 17 years 1 month 19 days. Examination of all the remaining listed witnesses will require quite some time. Therefore, keeping in consideration of the nature of evidence available on the case record and the case diary as a whole, this Court is of the considered opinion that subject to final outcome in trial of the case, the liberty of bail can be granted to the accused petitioner, who is a resident of Barpeta subject to stringent conditions.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.50,000/- (Rupees Fifty Thousand)** only with two sureties of like amount to the satisfaction of the learned **Special Judge (POCSO Act), Dhemaji, Assam** 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;
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat of promise to any of the listed remaining witnesses who are acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court; and
- iii) That out of the two sureties one surety must be a government servant subject to verification of the relevant documents as to his permanent and temporary address as well as present place of posting with designation etc. to the satisfaction of the learned trial Court.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant