

GAHC010086522023



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

Case No. : Bail Appln./1475/2023

MISBAHUL ALI
S/O- NURUL HUSSAIN, RESIDENCE OF VILLAGE- SATKHALI, P.O.
SATKHALI, P.S. SIPAJHAR, DIST.- DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM

Advocate for the Petitioner : MR M HOQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

12.06.2023

Heard Mr M Hoque, learned counsel, Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. The petitioner, Misbahul Ali, who is in jail since 31.03.2023, has preferred this application under Section 439 CrPC, seeking bail in connection with Jalukbari PS Case No. 193/2023, under Sections 363/366 IPC, read with Section 6 of the POCSO Act.

3. Learned counsel for the petitioner has submitted that the accused petitioner is a 20 years old boy and he was arrested on 31.03.2023 and since then, he has been languishing in jail and has completed 74 days in jail hazot. So, considering the period of detention and the young age of the petitioner, his bail prayer may be considered.

4. On the other hand, learned Additional Public Prosecutor submits that the victim is a minor girl and though she has eloped with the accused/ petitioner, but her consent cannot be taken into consideration.

5. I have considered the submissions made by the learned counsel for both the parties. I have also perused the Case Diary, along with the statement of the victim recorded under Section 164 CrPC.

6. From the statement of the victim girl, it appears that she is a young girl of 15 years and she has admitted that she has love affairs with the petitioner, Misbahul and out of such love affairs, she has developed physical relationship with the petitioner and on the relevant day, she has voluntarily eloped with the petitioner. However, as the victim is a minor, her consent is no consent.

5. Considering the background of the case as well as the period of detention, this bail application is allowed. Accordingly, it is hereby directed that the petitioner, namely, Misbahul Ali, shall be released on bail on furnishing bail bond of Rs. 25,000/- with two sureties of the like amount, one of which must be a Government Servant, to the satisfaction of the learned Special Judge (POCSO), Kamrup(Metro), in connection with the aforesaid case. The bail granted to the petitioner shall be subject to following conditions:-

(a) The petitioner shall not leave the territorial jurisdiction of learned Special Judge (POCSO), Kamrup (Metro), without prior written permission from him;

(b) The petitioner shall not hamper and tamper with the evidence of the case;

(c) The 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 them from disclosing such facts to the Court or to any police office.

(d) The petitioner shall not try to contact any of the witness by any mode including telephone, social media etc.

6. With the aforesaid directions, this Bail Application stands disposed of.

7. Send back the Case Diary.

JUDGE

Comparing Assistant