

GAHC010087762023



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

Case No. : Bail Appln./1489/2023

TAPAN BISWAS AND ANR
S/O ANIL BISWAS,
R/O BORPOTHAR
P.S. KACHUA
DIST. NAGAON, ASSAM

2: MISS. JUNMAI BORAH
D/O LATE DUDUL BORAH
R/O VILL- PAMILA
P.S. KACHUA
DIST. NAGAON
ASSA

VERSUS

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

2:SRI DHERSING PATORI
S/O LT. DEORI PATOR @ SUNDAR PATOR
R/O VILL- 1 NO. JARTHANGNALA
P.S. BAITHALANGSO
P.O. PAHARGURI
DIST. WEST KARBI ANGLONG
ASSA

Advocate for the Petitioner : MS M D MEDHI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

22.05.2023

Heard Ms. J. Kalita, learned counsel appearing for the accused petitioners as well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioners, namely, **1) Tapan Biswas and 2) Junmai Borah** have prayed for grant of bail in connection with **Spl.(POCSO) Case No.07/23** corresponding to **Baithalangso P.S. Case No. 91/2022** under Sections **366/376(3)** of the IPC read with Section **4** of the POCSO Act.

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

Ms. J. Kalita, learned counsel appearing for the accused petitioners, submits that the accused petitioner No.1 has been languishing in judicial custody for 168 days, while the accused petitioner No.2 lady is for 136 days. Ms. Kalita further submits that co-accused Mantu Boruah has already been enlarged on bail by this Court. Therefore, Ms. Kalita submits, the present accused petitioners being innocent and maintaining parity in order may be directed to be released on bail.

Per contra, Mr. B. Sarma, learned Addl. Public Prosecutor, submits that two female children were victims in this case and they and others in their statements under Sections 161 and 164 Cr.P.C. have implicated both the accused petitioners. Therefore, Mr. Sarma submits that the liberty of bail, if granted to the accused petitioners, it may likely to disrupt a smooth and fair trial of the

case.

The F.I.R. reveals the allegation that on 01.12.2022, the informant's daughter along with three of her female friends went missing from their school. Later on, the three female friends were recovered with the help of police but, the informant's daughter was untraceable. On 02.12.2022, at about 3 p.m., the informant's daughter returned home by herself and informed that all the four girls were kidnapped by the accused petitioner No.1 to Kampur Railway Station and then to Guwahati. It is alleged that the informant's daughter was kept in a hotel at Sonapur and she was raped by the accused petitioner No.1 at night.

It is noticed that the accused petitioner No.1 has been in judicial custody since 06.12.2022 while the accused petitioner No.2 since 04.01.2023.

The medical report indicates evidence of some injury and suggestive of forceful genital penetration.

A perusal of the case record, it is revealed that the investigation is completed with filing of the charge-sheet under Sections 366/376(3) of the IPC read with Section 4 of the POCSO Act against the accused petitioner No.1, while under Sections 120B/366A of the IPC against the accused petitioner No.2 on 31.01.2023. However, the learned Court is yet to consider the charges as the co-accused person has not appeared.

On scrutiny of the case record along with the case diary including the statements of the victim girls under Section 164 Cr.P.C. projects the accused petitioner No.1 as the prime accused in the case. There is abundance of prima facie incriminating material against him. Therefore, this Court is of the opinion that if the liberty of bail is granted to him, the trial of the case, if charges are framed, may likely to be adversely affected. Accordingly the bail application of

the accused petitioner No.1 namely, Tapan Biswas stands **rejected**.

So far the prayer for bail of the accused petitioner No.2, who is a lady, it appears that the prima facie evidence shows her to be an associate circumstantially of the prime accused. Her case is almost in the similar footing of co-accused Mantu Boruah. Therefore, this Court is of the opinion that if the liberty of bail is granted to her, the trial of the case is unlikely to be adversely affected.

Accordingly, it is provided that the accused petitioner No.2, namely **Junmai Borah**, shall be released on bail of **Rs. 40,000/- (Rupees Forty Thousand) only** with two sureties of like amount to the satisfaction of the learned **Special Judge (POCSO Act), West Karbi Anglong, Hamren** subject to the following conditions-

- i) That the accused/petitioner No.2 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 No.2 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

This disposes of the bail application.

JUDGE

Comparing Assistant