

GAHC010097382023



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

Case No. : Bail Appln./1640/2023

NAZIMUL HOQUE
S/O AMINUR RAHMAN
VILL- TIAMARI PT. I
P.S. GAURIPUR
DIST. DHUBRI, ASSAM,
PIN-783331

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

31.05.2023

Heard Mr. N.J. Dutta, learned counsel for the accused petitioner as well as Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioner, namely **Nazimul Hoque** has prayed for grant of bail in connection with **Special (POCSO) Case No.14/2023** under Sections **419/376** of the IPC read with Section **4** of the POCSO Act, pending in the Court of learned Special Judge (POCSO Act), Sonitpur, Tezpur [corresponding to **Chariduar P.S. Case No.188/2022**].

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

The FIR reveals the allegation that the present accused petitioner identifying himself as a Hindu youth established physical relation with the victim girl aged about 14 years 7 months.

It is noticed that the accused petitioner has been in judicial custody since 10.10.2022, that is, for 234 days.

A perusal of the case record reveals that the charge-sheet under Section 376 of the IPC read with Section 4 of the POCSO Act was filed on 17.01.2023. The learned trial Court after perusal of the case diary and hearing of both sides having found prima facie material, framed charges under Sections 419/376 of the IPC read with Section 4 of the POCSO Act vide order, dated 25.01.2023. There is a list of 5(five) prosecution witnesses in the charge-sheet and out of them the most material witnesses, namely, the victim girl (P.W.1) and her mother/the informant (P.W.2) are already examined and cross-examined in the case.

Although the victim girl stated her age to be about 14 years on the date of the alleged occurrence the medical evidence shows her age 'to be just above 18 years' without any sign of sexual intercourse.

There is prima facie incriminating material against the accused petitioner subject, however, to final outcome in trial.

Having heard the learned counsel of both sides and perusal of the case record and further, the length of detention, this Court is of the considered opinion that further continuation of detention of the accused petitioner in judicial custody for the purpose of the remaining part of trial of the case may not be warranted.

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), Sonitpur, Tezpur** 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.

Be it mentioned that no observation made in this bail order shall have any bearing in the judicial discretion of the learned trial Court.

This disposes of the bail application.

JUDGE

Comparing Assistant