

GAHC010103432023



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

Case No. : Bail Appln./1764/2023

HUSSAIN ALI
A R/O BAGORMARI, P.O. AND P.S.-KHARUPETIA, DIST-DARRANG, ASSAM,
PIN-784115

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. T K BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

30/06/2023

Heard Ms. S Kakoti, learned counsel for the petitioner and Mr. M P Goswami, learned Additional Public Prosecutor, Assam for the State.

This application under Section 439 Cr.P.C. has been filed by the petitioner, namely, **Hussain Ali**, seeking bail in **Special (POCSO) Case No. 56/2021** arising out of **Dhula Police Station Case No. 177/2016** corresponding to G.R. No. 1236/2016 registered under Sections 366/376(2) (n)/376(3) of the IPC read with Section 4 of the POCSO Act, wherein he was arrested on 22.02.2023 and is in custody since then.

According to the petitioner, he and the victim girl developed a love affair amongst them to which the parents of the victim girl were not happy with the said relationship and as agreed by the

victim girl, they eloped on 19.04.2016 to his paternal home. As the victim was a minor at that point of time, she was treated like a female child in her family and he too did not treat her as his wife and he did not have any physical relation with the victim girl. Thereafter, the petitioner went to Bangaluru in search of work to earn his livelihood. Petitioner stated that after obtaining majority by the victim, he married her and they lived together as husband and wife and later, she separated herself from the petitioner and started to live in her paternal home. Petitioner stated that after dissolution of her marriage with the petitioner, the victim girl married another person and she is presently a married woman. After his return from Bangaluru police arrested him on 22.02.2023 in said Dhula Police Station Case No. 177/2016 and was produced before the Additional Sessions Judge (FTC), Darrang, Mongoldoi and then he was sent to jail custody.

In the Charge-Sheet of said Dhula Police Station Case No. 177/2016, the petitioner was shown as absconder and the Court had already issued Non-Bailable Warrant of Arrest against him for his appearance in the case.

Perused the record that was called for from the Court of Special Judge (POCSO), Darrang, Mongoldoi.

It is seen from the FIR of said Dhula Police Station Case No. 177/2016 lodged by the mother of the victim on 21.04.2016 stating that on 19.04.2016 her minor daughter of 15 years in the morning around 9 AM while proceeding to Kharupetia Girls High School from the midway was found missing, did not attend the school and could not be recovered till then. Same was registered as Dhula Police Station Case No. 177/2016. The victim was later recovered and her statement under Section 164 CrPC was recorded on 18.07.2016 by the learned Judicial Magistrate First Class, Darrang, Mongoldoi in which the victim stated before the Magistrate that the petitioner forcefully took her away in a Maruti Car by threatening her and took her to Nalbari district, there she was forcefully married by the petitioner and his people through a Kaji telling the kaji that she was 19 years old. Then the petitioner took her to a rented house at Kharupetia where she was kept for three months. During the said period the petitioner forcefully had physical relation with her and thereafter, the petitioner fled away from the said house leaving her alone making pregnant of two months. She had also come to know that the petitioner is a married man having two children and while he was with her in the said rented house at Kharupetia he used to torture her physically.

Said 164 CrPC statement of the victim reflects that she was 15 years old at that point of time.

The Charge-Sheet in said Dhula Police Station Case No. 177/2016 was filed on 27.12.2020 finding prima-facie case against the petitioner under Sections 366(A)/376 IPC read with Section 6 of the POCSO Act, showing the petitioner as an absconder.

Though the Special Court took cognizance of the offence and issued summons to the petitioner, he did not appear in the matter for which order of NBWA was issued on 24.08.2021 and thereafter, even order of Proclamation and Attachment was also issued against the petitioner in the said Special Case on 22.11.2021 and by order dated 09.12.2021 the petitioner was declared an absconder and the said special case stood filed against him. After he was taken into custody in February, 2023, the petitioner was produced before the learned Special Judge on 22.02.2023 and since then he is in custody.

On 15.03.2023, charge under Sections 366/376(2)(n)/376(3) of the IPC read with Section 4 of the POCSO Act, 2012 were framed against the petitioner that were read over and explained to him, to which the petitioner pleaded not guilty. Accordingly, trial of the said special case began.

Learned Special Judge have already issued summons to the prosecution witnesses for recording of their evidence and the last date was fixed on 14.06.2023 for production and prosecution evidence.

Considering such materials in the case records regarding involvement of the petitioner in the alleged crime, the Court is of the view that this is not a fit case to grant bail to the petitioner, namely, **Hussain Ali**, in said **Special (POCSO) Case No. 56/2021** arising out of **Dhula Police Station Case No. 177/2016**.

Accordingly, this bail application of the petitioner, named above, in said **Special (POCSO) Case No. 56/2021** arising out of **Dhula Police Station Case No. 177/2016** stands rejected.

JUDGE

Comparing Assistant