

GAHC010107632023



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

Case No. : Bail Appln./1788/2023

SURUJ MIYAN @ SURUJ ALI
S/O LT. SOYED ALI, R/O VILL-NAJAN (CHAPORI), P.S.-JAKHALABANDHA,
DIST-NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : S AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

19.06.2023

Heard Mr S Ahmed, learned counsel appearing for the petitioner and Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. By this application filed under Section 439 CrPC, the petitioner, Suruj Miyan @ Suruj Ali, who was arrested on 12.01.2023, has prayed for releasing him on bail, in connection with Special (POCSO) Case No. 71 of 2023 (arising out of Jakhalabandha

PS Case No. 08/2023) under Section 376 AB IPC, read with Section 6 of the POCSO Act.

3. It is submitted by the learned counsel for the petitioner that accused petitioner was arrested on 12.01.2023 and since then, he has been languishing in jail hazot. Charge sheet has been submitted after the mandatory period of detention, i.e., 90 days. So, under such circumstances, bail may be granted to the petitioner. In support of his submissions, learned counsel has placed his reliance on the following case-law:-

2022 (5) GLT 405; (*Samsun Noor @ Samsul Noor vs. State of Assam*)

4. On the other hand, learned Additional Public Prosecutor, opposing the bail prayer of the petitioner, has submitted that the victim is a minor girl and there is an eye-witness to the incident, i.e., the brother of the victim, but they were not examined in the case. It is also submitted that as per the case record, the charge sheet was submitted on 28.02.2023, i.e., within the mandatory period of detention. So, the bail prayer of the petitioner may be rejected.

6. I have considered the submissions of the learned counsel for both the parties. I have also perused the Case Diary, along with the status report submitted by the Court of learned Additional District Judge No. 1 –cum- Special Judge (POCSO), Nagaon, Assam, in connection with Special (POCSO) Case No. 71/2023.

7. It appears that two witnesses were examined, i.e., PW-1 and PW-2, who are the parents of the victim girl and their statements were also recorded. Both PW-1 and PW-2 were not the eye-witnesses to the incident, but according to them, the brother of the victim, Sahirul Ali accompanied the victim girl and as he was present at the time of incident, he had seen the incident, but he was not examined. However, the statement of the victim was recorded under Section 164 CrPC.

8. Perused the statement of the victim girl, recorded under Section 164 CrPC, wherein she has alleged that the accused petitioner had committed sexual intercourse upon her.

As per the statement of the victim as well as the parents of the victim, the victim's brother, was present at the time of the alleged occurrence.

7. Considering the facts and circumstances of the case as well as the status report and the submissions made by the learned counsel for the parties, the bail prayer of the petitioner is hereby rejected at this stage.

9. With the aforesaid observations, this Bail Application stands disposed of.

10. Send back the Case Diary.

JUDGE

Comparing Assistant