

GAHC010130902023



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

Case No. : Bail Appln./2122/2023

HABIBUR RAHMAN @ HOBI ALI
S/O LT. FAJAR ALI
R/O VILL- SECONEE
BORHULA, P.O. AND P.S. JAKHLABANDHA
DIST.NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

28.06.2023

Heard Ms. G. Borah, learned counsel for the accused petitioner. Also heard Mr. D.P. Goswami, learned Addl. P.P., Assam appearing for the State respondent. By this petition under Section 439 Cr.P.C., the accused/petitioner, namely

Habibur Rahman @Hobi Ali has prayed for grant of bail in connection with **Special POCSO Case No.61/2017** in connection with **Jakhalabandha P.S. Case No.40/2016** under Sections **366A/34** of the IPC read with Section **4** of the POCSO Act, 2012.

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

The case relates to kidnapping and commission of penetrative sexual assault on a female child aged about 15 years by the accused petitioner and others.

It is noticed that the accused petitioner has been in judicial custody since 29.03.2023, that is, for 92 days.

A perusal of the case record, it is noticed that the accused petitioner and another were shown absconding in the charge-sheet submitted on 07.08.2017. Due to default in appearance after filing of charge-sheet the learned trial Court continued to issue NBWA against the accused petitioner and ultimately, he was produced under arrest on execution of the Warrant of Arrest vide order, dated 29.03.2023 and since then he has been in judicial custody. In the order, dated 25.04.2023, the learned trial Court while rejecting his bail application held the opinion that the previous conduct of the accused does not generate any faith that he will appear regularly if he is released on bail. Now, the case is pending for appearance of another co-accused. Thus, the case is pending at appearance stage.

The radiological report shows that the actual age of the victim girl is 16/17 years without any mark of violence on her person and there is no evidence of recent sexual intercourse.

A perusal of the statement of the victim girl recorded under Sections 161

and 164 Cr.P.C. reveals that the present accused petitioner associated with 3(three) others in kidnapping the victim girl and then rape was committed repeatedly on her by a co-accused. After few days of kidnapping, her mother recovered her from the house of the uncle of a co-accused located at Borghuli

Upon hearing the learned counsel of both sides and perusal of the case record along with the case diary, this Court is of the considered opinion that considering the length of detention (92 days) and in the backdrop of facts and evidence peculiar to the present accused petitioner, his further continuation of detention in the interest of trial of the case is not warranted.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.40,000/- (Rupees Fifty Thousand)** only with two sureties of like amount to the satisfaction of the learned **Special Judge(POCSO Act), Nagaon** 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 or promise to any person who is 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 must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant