

GAHC010143992023



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

Case No. : Bail Appln./2303/2023

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

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 ROBIN PHUKAN
ORDER**

08.11.2023

Heard Ms. M.D. Medhi, learned counsel for the accused and Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, **Tapan Biswas**, who has been languishing in jail hazot since 06.12.2022, in connection with the **Special POCSO Case No. 07/2023**, arising out of Baithalangso P.S. Case No. 91/2022, under Sections 366/376[3] of the IPC, read with Section 4 of the POCSO Act, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by one Dhersing Pator, on 02.12.2022. The essence of allegations made in the FIR is that on 01.12.2022, at about 9 am, his daughter Smt. 'X' [name withheld] went to school at Rajagaon, along with three of her friends and they did not return home till evening. Thereafter, the matter was reported to Baithalangso Police Station and later on, he came to know that the except his daughter, girls were recovered at Sonapur with the help of Sonapur Police Station. Thereafter, on 02.12.2022, at about 3 pm his daughter returned home and she informed that all the girls were kidnapped by one Tapan Biswas, who took them to Kampur Railway Station and then to Guwahati and the three other girls were kept in a hotel at Sonapur and his daughter was raped by him.

4. Ms. Medhi, learned counsel for the accused submits that the accused was arrested on 06.12.2022, and since then he has been languishing in jail hazot for last 326 days. Ms. Medhi further submits that after completion of the

investigation the IO had laid charge sheet against the accused and that trial is going on and in the meantime the learned court below has examined two witnesses, the informant and the victim girl, out of 24 witnesses cited in the charge sheet. Producing the copy of the evidence of the informant and the victim girl, who have been examined by the learned court below, as PW1 and PW2, Ms. Medhi submits that no offence under Section 376 of the IPC, read with Section 4 of the POCSO is made out against the accused and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Sarma, learned Additional Public Prosecutor submits that though the victim girl has implicated the accused with the offence alleged in the FIR, in her statement recorded under Section 164 of the Cr.P.C., yet, she has not implicated the accused with the offence charged in her evidence before the court. However, in view of the nature and gravity of the offence, Mr. Sarma, learned Additional Public Prosecutor has opposed the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the evidence of PW1 and PW2.

7. It appears that the accused has been arrested on 06.12.2022, and since then, he has been languishing in jail hazot for last 326 days. Further, it appears that altogether 24 witnesses have been cited in the charge sheet and out of 24 witnesses, 2 witnesses have been examined till date and there is no immediate prospect of conclusion of trial.

8. Considering above and also considering the evidence so adduced by the informant and the victim girl before the learned court below and without commenting on the merit of the same, this Court is of the view that a prima-

facie case for granting bail to the accused is made out. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- only, with one surety of like amount to the satisfaction of the learned **Special Judge, POCSO, West Karbi Anglong, Hamren**, the accused be enlarged on bail.

9. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant