

GAHC010149652023



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

Case No. : Bail Appln./2359/2023

ABDUL MALEK SARKAR @ MD. MALEK SARKAR
S/O- LATE SAHED ALI MUNSHI, RESIDENT OF VILLAGE- DAKHIN LASKAR
PATHAR, P.O. LASKAR PATHER, P.S. LANKA, DIST.- HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM ANR.
REP. BY P.P., ASSAM

2:SRI JATINDRA SINGHA
S/O- SRI IBOTOMBA SINGHA
RESIDENT OF VILLAGE- NAYANPUR
P.S. LANKA
DISTRICT- HOJAI
ASSA

Advocate for the Petitioner : MR R S CHAUHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

01.09.2023

Heard Mr. R. S. Chauhan, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor appearing for the State of

Assam.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Abdul Malek Sarkar @ Md. Malek Sarkar, who is aged about 62 years of age and has been detained behind the bars since 26.04.2023 (since last 126 days), in connection with POCSO Case No. 98(H)/2023 pending before the Court of learned Special Judge, Hojai.

The accusation in this case is that on 26.04.2023 the uncle of the victim girl lodged an FIR before the Officer-In-Charge of Lanka Police Station, *inter-alia*, alleging that the present petitioner subjected the daughter of the elder brother of the first informant to sexual assault.

On receipt of the said FIR, Lanka P.S. Case No. 254/2023 was registered and investigation was initiated and ultimately on completion of investigation charge-sheet was laid against the present petitioner. Later on, 20.06.2023, learned Special Judge-cum-Special Judge POCSO, Hojai framed charges under section 10 of the POCSO Act read with Section 354 (B) of the Indian Penal Code against the present petitioner.

Learned counsel for the petitioner has submitted that though there is a stipulation in section 35 of the POCSO Act, 2012 that the evidence of the victim girl has to be recorded within 30 days of taking cognizance of the offence and reasons and delay has to be mentioned, however, in the instant case, though the case was fixed for recording of statement of victim on several occasions, however, the victim girl has not appeared before the learned trial Court.

Learned counsel for the petitioner has also submitted that he is no way involved in the offence alleged against him in the FIR.

On the other hand, learned Additional Public Prosecutor submits that the allegations against the present petitioner are grave and serious and hence, the

petitioner is a minor girl studying in the school in which the wife of the present petitioner is the Headmistress releasing the petitioner on bail before examination of the victim girl as witness may have an adverse impact on the victim girl and the petitioner may influence the victim girl.

Considering the submissions made by the learned counsel for the parties as well as materials on record, this Court is also of the considered opinion that the prayer for bail of the present petitioner may only be considered after the deposition of victim girl is recorded in POCSO Case No. 98(H)/2023.

In view of above, the application for the bail of the petitioner is rejected at this stage with an observation that he may approach the learned trial Court after the deposition of victim girl is recorded in the POCSO Case No. 98(H)/2023.

With the above observation, this instant bail application is hereby disposed of.

JUDGE

Comparing Assistant