

GAHC010162542023



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

Case No. : Bail Appln./2620/2023

SAKIL ISLAM BARBHUYIA
S/O RAFIK UDDIN BARBHUIYA
R/O VILL- MOHANPUR GRANT
P.S. ALGAPUR
DIST. HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

2:SUJIT REE
S/O- LT. ANANTA REE
VILL- MOHAN PUR GRANT-V
DIST- HAILAKAND

Advocate for the Petitioner : MR. K A MAZUMDER
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

30.08.2023

Heard Mr. K. A. Mazumder, learned counsel for the accused petitioner. Also heard Mr. B. B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

Notice served on the respondent No.2/informant by dasti mode through the officer-in-charge, Algapur P.S. on 10.08.2023 vide paragraph No.2 of the affidavit, dated 30.08.2023. None appears for the respondent No.2.

By this petition under Section 439 Cr.P.C., the accused petitioner, namely **Sakil Islam Barbhuyia** has prayed for grant of bail in connection with **Algapur P.S. Case No.115/2023** under Section **366/376/302/34** of IPC read with Section 4 of the POCSO Act.

The case diary, as called for, is placed before the Court.

Mr. K. A. Mazumder, learned counsel for the accused petitioner, submits that the accused has been in judicial custody for 24 days despite the fact that he is not named in the F.I.R. It has been further submitted that the accused is a student of H.S. 2nd year and aged about 18 years. It is also submitted that the accused was severely beaten up while in police custody despite he was absolutely innocent.

Mr. B. B. Gogoi, learned Additional Public Prosecutor, submits that the present accused is not named in the F.I.R. and the case diary reveals that he rendered aide in absconding the three prime accused persons, who are named in the F.I.R. On the other hand, the cause of death of the victim could not be ascertained during postmortem examination.

The F.I.R. reveals the allegation of rape upon the victim girl, who is aged about 14 years.

It is noticed that the accused petitioner has been in judicial custody since 14.07.2023, that is, for 47 days.

The post mortem examination report shows that the cause of death of the

deceased girl, aged about 13 years, is kept pending till the receipt of chemical examiner's report from the DFS, Assam. However, bruise mark on left leg below the knee joint was found.

A perusal of the school certificate shows that the victim's date of birth was 09.08.2009 and she was a student of class VIII.

The case diary reveals that the present accused was not the prime perpetrator of the crime and only evidence is that he helped one prime accused in fleeing away to evade the inevitable arrest by police. He stated to be aged about 18 years. Therefore, this Court is of the considered opinion that if the liberty of bail is granted to him, the ongoing investigation is unlikely to be adversely affected.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.40,000/- (Rupees Forty Thousand) only** with one surety of like amount to the satisfaction of the learned **Special Judge (POCSO Act), Hailakandi** subject to the following conditions-

- (i) That the accused petitioner shall cooperate with the Investigating Officer as and when required; and
- (ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or the Court.

This disposes of the bail application.

JUDGE

Comparing Assistant