

GAHC010163122023



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

Case No. : Bail Appln./2672/2023

BIKASH DOWARAH @ MUNU
S/O SRI SWARAT DOWERAH
R/O VILL- NOHARANI (JORKATA) GAON, UNDER DHEMAJI POLICE
STATION, IN THE DISTRICT OF DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE LD. PP, ASSAM

2:NIRU CHAMUAH
W/O SRI PRANJAL CHAMUAH
R/O NOHARANI
P.O JORKATA
DIST. DHEMAJ

Advocate for the Petitioner : MR. M K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

24.08.2023

Heard Ms. B. Chetry, learned counsel for the accused-petitioner. Also heard Mr. B. Sarma, learned Addl. PP for the State.

2. This bail application has been filed by the petitioner, namely, Bikash Dowarah @ Munu seeking bail as he was arrested in connection with Dhemaaji P.S. Case No. 435/2021 which is presently pending before the Special Judge, Dhemaaji as Special POCSO case No. 38 (DH0)/2021.

3. An FIR dated 17.09.2021 was lodged by the informant namely the opposite party No. 2 alleging that on 17.09.2021 at around 4.30 PM, the accused person namely, the petitioner herein, entered the house of the informant through the back door and committed rape on the daughter of the informant and fled away. The said FIR was received and registered as Dhemaaji Case No. 435/2021 under Section 376(3) of the IPC read with Section 4 of the POCSO Act. Since his date of arrest, the accused-petitioner has been in custody. Investigations were conducted on the basis of the FIR registered. Charge-sheet was filed and the matter is presently under trial before the Special Court, Dhemaaji,

4. The learned counsel for the accused-petitioner submits that the allegations made in the FIR are completely false and the petitioner did not commit any crime as alleged. He further submits that the victim girl is not a minor but her age is about 18 years. It is further submitted that medical examination conducted did not reveal any evidence of forceful sexual assault.

5. The learned Addl. PP strongly objected to the grant of bail and submits that the petitioner is accused of committing a heinous crime and if released on bail, there is a strong possibility of the petitioner intimidating the witnesses and thereby affect the conduct of free and fair trial.

6. This Court by order dated 02.08.2023 had called for the scanned copy of the case records. The scanned copy as called for has been received and placed

before the Court. The scanned copy of the case records received has been carefully perused.

7. It is seen that the matter is presently under trial. Some of the witnesses have been examined but some other witnesses are still left to be examined. The statement given by the victim girl under Section 164 Cr.P.C as well as her deposition before the Special Judge has been carefully perused.

8. The victim girl has clearly implicated the petitioner. The medical report reveals that upon radiological examination, the victim girl's age is considered to be below 18 years. Some injuries have also been recorded upon internal examination of the victim.

9. The Court has given its due consideration to the allegations made as well as to the materials available before this Court. The petitioner is accused of commission of an offence under Section 4 of the POCSO Act. The punishment prescribed under Section 4 of the Act, if convicted is for a term, which shall not be less than 10 years but which may extend to imprisonment for life and also be liable to fine. The gravity of the offence alleged is very serious. The punishment prescribed if convicted is also severe. The petitioner is a resident of the same village and from the deposition of some of the witnesses, it appears that the petitioner and the respondent No. 2/informant as well as the victim girl are neighbours and residing in the same village. The petitioner claims to be a daily wage earner. Under Section 29 of the POCSO Act, there is presumption of certain offences which includes Section 3 of the POCSO Act and punishment of which is prescribed under Section 4 of the Act,

10. The trial is presently underway and few witnesses are yet to be examined. The possibility of the petitioner influencing the witnesses as he resides in the

same village, cannot be ruled out, if he is enlarged on bail at this stage. The conditions necessary for grant of bail have been laid down by the Apex Court in several Judgments. In this connection reference can be made to the Judgments of the Apex Court in Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and Anr, reported in (2004) 7 SCC 528; Kanwar Singh Meena Vs. State of Rajasthan and Anr., reported in (2012) 12 SCC 180; Sunil Kumar Vs. State of Bihar and Anr., reported in (2022) 3 SCC 245 and Sumitha Pradeep Vs. Arum Kumar C.K. and Anr., reported in 2022 SCC OnLine SC 1529.

11. Keeping in view the law laid down by the Apex Court and considering the gravity of the offences alleged, the severity of the punishment prescribed if found convicted, the possibility of the petitioner influencing the witnesses as that the matter is under trial as well as keeping in view the provisions of Section 29 of the POCSO Act, this Court does not consider it conducive to enlarge the petitioner on bail at this stage.

12. The prayer for bail is, therefore, rejected. The bail application is therefore dismissed.

JUDGE

Comparing Assistant