

GAHC010168262023



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

Case No. : Bail Appln./2768/2023

JAHIDUL ISLAM
S/O SAMSUL HOQUE
VILL- GANDHARIPARA
P.S. BARPETA ROAD,
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:RAFIKUL ISLAM
S/O FAJAL HOQUE
VILL- RAMPUR

MOUZA- TITAPANI
P.S. KALGACHIA
DIST. BARPETA
ASSAM

PIN-78131

Advocate for the Petitioner : MR. A M AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

Date : 08.11.2023

Heard Mr. H. R. A. Choudhury, learned Senior Counsel for the accused petitioner as well as Mr. B.B. Gogoi, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Jahidul Islam**, has prayed for grant of bail in connection with **Special POCSO Case No.50/2022** arising out of Kalgachia PS Case No. 471/2015 registered under Section 366 (A)/34 IPC added Section 4 of the POCSO Act, 2012.

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

Mr. H.R.A.Choudhury, learned Senior Counsel appearing for the accused petitioner submits that the accused has been languishing in judicial custody for 208 days despite he was absolutely innocent. Mr. Choudhury submits that in fact, the informant's daughter firstly eloped with the accused petitioner on 09.04.2015 and accordingly an F.I.R. was lodged against him, which was amicably settled outside the court and the victim returned. During the pendency of Kalgachia PS Case No. 471/2015 under Section 366A/34 of the I.P.C., the alleged victim girl again eloped with him on 17.12.2015 and accordingly another 2nd F.I.R. was lodged whereupon Kalgachia PS case No. 1483/2015 under Section 366A/34 of the IPC was registered. According to Mr. Choudhury, learned Senior Counsel, in the aforesaid case, after trial he was acquainted of the charge vide judgment and order, dated 07.09.2022 in Sessions Case No. 252/2019. However, after about 6 years, on the prayer of the investigating officer the learned court below has added Section 4 of the POCSO Act to Section 366A/34 of the IPC against him. Thus, Mr. Choudhury submits in this love relationship between the accused petitioner and the informant's daughter, the accused has been vexed twice.

Mr. B. B. Gogoi, learned Additional Public Prosecutor submits that the incident took place in

2015 and due to absconding of the co-accused persons the record reveals, the case is at its appearance stage.

The allegation in the FIR reveals that when the daughter of the informant was going to school, the present accused petitioner along with four other co-accused persons kidnapped her minor daughter.

It is noticed that the accused has been in judicial custody since 04.04.2023, that is, for 208 days

It is further noticed that by order, dated 08.01.2021, passed by the i/c Additional Chief Judicial Magistrate, Barpeta, Section 4 of the POCSO Act was added to the case whereas the F.I.R. was lodged on 10.04.2015 in the case alleging the incident that took place on 09.04.2015 at about 9 am.

The case is presently at appearance stage.

The statements of the victim girl recorded under Sections 161 and 164 CrPC show that she was forcibly subjected to marriage after kidnapping and then commission of rape by the accused. As per medical report, she was aged about 13 years without any external injury.

Now, having considered the above aspects of the instant case and length of detention, this Court is of the considered opinion that further continuation of detention of the accused is not warranted for the purpose of trial.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 40,000/-** with one surety of like amount to the satisfaction of the **learned Special Judge (POCS Act), Barpeta** 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; and
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the charge sheet listed witnesses.

Breach of any of the above conditions of bail shall render cancellation of the bail in

accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant