

GAHC010175752023



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

Case No. : Bail Appln./2829/2023

ABHIJIT SARKAR @ RAJU SARKAR
S/O LATE ADHIR CHANDRA SARKAR @ LUYAI SARKAR
R/O HAILAKANDI TOWN,
WARD NO. 10,
P.S. HAILAKANDI,
DIST. HAILAKANDI, ASSAM

VERSUS

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

2:MAMPI SHILL
W/O SATYA SHILL
R/O WARA NO. 5
HAILAKANDI TOWN
P.S. AND DIST. HAILAKANDI
PIN-788515

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

06.10.2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel assisted by Mr. M.A. Choudhury, learned counsel for the accused, Mr. K.K. Parasar, learned

Additional Public Prosecutor for the State respondent; and Ms. A. Begum, learned counsel for the informant.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Abhijit Sarkar @ Raju Sarkar**, who has been languishing in jail hazot, since 01.07.2023, in connection with the **Hailakandi P.S. Case No. 140/2023**, corresponding to Special [POCSO] Case No. 151/2023, under Sections 8/12 and added Section 4 of the POCSO Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by one Mampi Shill, on 01.07.2023. The essence of allegations made in the FIR is that her daughter, Smti. 'X' [name withheld], studying in Class IX and while she went to attend coaching classes with her private tutor namely, Raju Sarkar, on Thursday, at about 5 pm, said Raju Sarkar subjected her to sexual assault.

4. Mr. Choudhury, learned Senior Counsel for the accused submits that the IO has completed investigation and submitted charge sheet against the accused, under Sections 8/12/4 of the POCSO Act and later on, the learned Special Judge, Hailakandi, vide order dated 16.09.2023, has framed charge against the accused only under Section 12 of the POCSO Act. Mr. Choudhury further submits that the maximum punishment provided for the offence under Section 12 of the POCSO Act is 3 years and the accused person has been languishing in jail hazot for last 96 days and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Parasar, learned Additional Public Prosecutor submits that though the charge sheet was submitted against the accused under Sections 8/12/4 of the POCSO Act, the learned court below has framed charge against the accused only under Section 12 of the POCSO Act and that the trial is

going on.

6. Whereas, Ms. Begum, learned counsel for the informant has vehemently opposed the petition on the ground that the victim is suffering from Trauma and that at the relevant time the victim was 14 years and the accused is an old person. Ms. Begum further submits that the victim girl and the family members are yet to be examined and therefore, it is contended to dismiss the petition.

7. In reply to the above submission of learned counsel for the informant, Mr. Choudhury, learned Senior Counsel for the accused submits that the learned court below has already examined the victim and her mother, on 30.09.2023 and 04.10.2023.

8. 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 scanned copy of the record received from the learned court below.

9. It appears that though the charge sheet was submitted against the accused under Sections 8/12/4 of the POCSO Act, the learned court below has framed charge against the accused only under Section 12 of the POCSO Act. Further, it appears that the victim girl and her mother have already been examined on 31.09.2023 and 04.10.2023.

10. Having regard to above and also having regards to the period of detention, i.e. 96 days, this Court is inclined to allow this petition. 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, Hailakandi**, the accused be enlarged on bail.

- 11.** The above privilege is, however, subject to the following conditions:
- (i) that the accused shall appear before the learned court below on each and every date; and
 - (ii) that the accused shall not, directly or indirectly, make any threat to the witnesses.
- 12.** In terms of above, this bail application stands disposed of.

Comparing Assistant

JUDGE