

GAHC010177312023



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

Case No. : Bail Appln./2875/2023

MD. AMIRUL ISLAM
S/O ALIM UDDIN
VILL- LOTIBARI PART-III
P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM
PIN-783384

VERSUS

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

2:MOHINUR ISLAM
S/O LATE SAHA ALI
VILL- LOTIBARI PART-III
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR. A M AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 01.09.2023

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State.

This bail application has been preferred under Section 439 of Code of Criminal Procedure, 1973, praying for bail of petitioner, namely, Md. Amirul Islam, who is a young boy of 20 years of age and who is detained behind the bar since last 04.07.2023, in connection with Abhayapuri P. S. Case No. 340/2023 under Section 354 D of the Indian Penal Code read with Section 18 of the POCSO Act, 2012, added Section 67 B of the Information Technology Act, 2000 and Section 12 of POCSO Act, 2012.

The accusation in this case is that one Mohinur Islam, on 31.07.2023, lodged an FIR before the Officer-in-Charge of Abhayapuri Police Station, *inter-alia*, alleging that the present petitioner proposed to marry his younger sister (victim girl) and took her photograph and later on distorted her photographs and posted the same on social media.

It is also alleged in the FIR due to the said act of the petitioner, the sister of the first informant got mentally hurt and she attempted to commit suicide on 29.07.2023. However, she was recovered in a critical condition.

On receipt of the said FIR, Abhayapuri P.S. Case No. 340/2023 was registered under Section 354 D of the Indian Penal Code read with Section 18 of the POCSO Act, 2012.

Learned counsel for the petitioner submitted that though initially the case was registered under Section 354 D of the Indian Penal Code, which is bailable, along with Section 18 of the POCSO Act, 2012, which cannot be added unless it is accompanied with a provision of law laying down substantial offence, when the petitioner was produced before learned Special (POCSO) Court claiming bail, his bail was rejected, on the ground that the contents of FIR disclose offence under Section 67 B as well as Section 12 of the POCSO Act, 2012 along with Section 354 D of the Indian Penal Code.

Later on, on the prayer of the Investigating Officer, on the same day, Section 67 B of the Information Technology Act, 2000 and Section 12 of the POCSO Act, 2012 was added to this case.

It is submitted by learned counsel for the petitioner that the facts disclosed in the FIR does not constitute an offence under Section 12 of the POCSO Act, 2012. It is also submitted by learned counsel for the petitioner that to constitute an offence of sexual harassment under Section 11 of the POCSO Act, 2012, the acts mentioned in Sub-clause (i) to (vi) in that Section must be committed with sexual intent which according to learned counsel is not there in the instant case.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Abhayapuri P.S. Case No. 340/2023, which was called for in connection with this case and has submitted that though the statement of victim girl has been recorded under Section 161 of the Code of Criminal Procedure, 1973, her statement under Section 164 of the Code of Criminal Procedure, 1973 could not yet been recorded as she is not well.

On perusal of the statement of the victim girl recorded under Section 161 Code of Criminal Procedure, 1973, it appears that she has not supported the allegations made in the FIR against the present petitioner and has narrated a different story.

I have considered the submissions made by learned counsel for both the parties as well as perused the case diary including the statement of the victim recorded under Section 161 of the Code of Criminal Procedure, 1973.

Apart from the fact that the victim has not supported the case of prosecution side in her statement made under Section 161 Code of Criminal Procedure, 1973, another fact which is relevant at this stage is that the petitioner has already been detained behind the bar since last 28 days, which under facts and circumstances of the present case is a considerable period for conducting the investigation.

Further, from the facts and circumstances of this case, this Court is of the view that further custodial detention of the present petitioner is not necessary for fair completion of the investigation of this case, if he co-operates with the Investigating Officer.

In view of the above, the present petitioner, namely, Md. Amirul Islam, is hereby allowed to go on bail on furnishing of bail bond of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of the learned Special Judge, (POCSO) North Salmara, Abhayapuri, subject to the following condition :

1. That the petitioner shall co-operate with the Investigating Officer in fair completion of Abhayapuri P.S. Case No. 340/2023;
2. The petitioner shall not directly or indirectly make any inducement, threat, or promise to the victim girl or to any other person who is acquainted with the facts

of the case, so as to dissuade him or her from disclosing such facts to the Investigating Officer.

3. That the petitioner shall make himself available for interrogation in connection with Abhayapuri P.S. Case No. 340/2023 as and when so required by the Investigating Officer for fair completion of this case.

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

Send back the case diary.

JUDGE

Comparing Assistant