

GAHC010178662023



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

Case No. : Bail Appln./2857/2023

KHURSHID ALOM @ KHURSHID ALOM BHUYAN
S/O WAZED ALI BHUYAN,
VILL.- BATABARI,
P.S.- ABHYAPURI, DIST.- GOALPARA, ASSAM.

VERSUS

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

2:XXX
D/O LATE JOYNAL ABEDIN

VILL.- DOSTINAGAR WARD NO.- 13
P.O.- GOALPARA
P.S.- GOALPARA
PIN- 783101

DIST.- GOALPARA
ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

11.10.2023

Heard Mr. N. Uddin, 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, **Khurshid Alom @ Khurshid Alom Bhuyan**, seeking bail in connection with **Special (P) Case No. 08/2023** arising out of **Goalpara P.S. Case No. 314/2021** under Sections 376/34 of the IPC read with Section 4 of the POCSO Act. The accused-petitioner was arrested on 22.05.2023 and since then he has been in custody.

3. An FIR dated 21.05.2023 was lodged by the informant before the Officer-in-Charge, Goalpara Police Station wherein it was alleged that on 19.05.2021 at about 11.30 AM, the informant and her friend went to Nayapara from their house. The accused persons, named in the FIR, making some false promise, took the informant and her friend at Kharmuza by an E-Rickshaw and there the accused persons forcefully committed rape on them. The said FIR was received and registered as Goalpara P.S Case No. 314/2021 under Section 376 read with Section 4 of the POCSO Act.

4. Pursuant to the FIR being lodged, investigations in the matter were initiated and the accused-petitioner was arrested.

5. This Court vide order dated 25.09.2023 had called for the scanned copy of the case records.

6. Today when the matter is called up, the scanned copy of case records has

been produced before the Court.

7. The learned counsels for the parties have been heard. Pleadings on record have been perused. The scanned copies of the case records presented before the Court has also been perused.

8. It is seen that the victim girls in their statements under Section 164 Cr. P.C. have clearly implicated the petitioner. The trial has commenced and prosecution witnesses have been examined. But the victim girls are yet to be examined. The only ground of the petitioner claiming bail is that the co-accused has not yet appeared before the Court and the trial has not commenced because of the failure of the co-accused to appear before the Court in pursuance to the summons served.

9. The learned counsel for the petitioner has submitted that because of the non-appearance of the co-accused, there is a delay that has occurred in proceeding with the trial and in that view of the matter for no fault of the petitioner, he is still in detention.

10. From the report which was called for from the Sessions Judge, Goalpara, it is seen that the last date in the matter was fixed on 11.09.2023 for production/appearance. From the data available in the CIS, the next date fixed in the matter is shown to be 20.10.2023 for production of the accused. The matter relates to a special legislation namely POCSO and the petitioner is undergoing trial for the offences alleged to have been committed under the said Act. This is a special Act and is a self contained comprehensive legislation to provide for protection of children from offences of sexual assault, sexual

harassment and pornography with due regard for safeguarding the interest as well as the well-being of the child at every stage of the judicial process. Under Section 299 Cr.P.C., there is provision for recording evidence in the absence of the accused subject to the Court passing necessary orders as per the procedure prescribed under Section 299.

11. Therefore, considering the statements made under Section 164 Cr.P.C. by the victim girls which *prima facie* incriminate the petitioner as well as the fact that next date fixed for production of the accused before the Court is on 20.10.2023 and also taking into consideration of the gravity of the offences alleged against the petitioner and the severity of the punishment prescribed under the POCSO Act, if convicted, this Court does not consider it appropriate to grant the prayer of bail as prayed for.

12. The bail application is, accordingly, dismissed.

JUDGE

Comparing Assistant