

GAHC010195282022



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

Case No. : Bail Appln./2461/2022

RATAN DAS @ RATAN DUTTA
S/O LATE GAURANGA CH. DAS
R/O HOUSE NO. 35, SOUTH COLONY, KALIBARI, P.S. GEETANAGAR, DIST.
KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

06.01.2023

Heard Mr. M. Biswas, learned counsel for the accused and Ms. S.H. Bora, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure,

1973, is preferred by accused, namely, Ratan Das @ Ratan Dutta, who has languishing in jail hazot since 04.07.2022, in connection with the Sessions [Special] Case No. 55/2022, corresponding to Geetanagar P.S. Case No. 194/2022, under section 376 of the IPC read with section 4 of the POCSO Act, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by one Minu Mukherjee, on 04.07.2022, to the effect that on 01.07.2022, at about 4.30 pm her daughter Smti X [name withheld], 13 years went to purchase egg from the shop of one Ratan Das situated at South Colony, Bamunimaidan and Ratan Das called her daughter inside the shop and asked her to seat in a chair and thereafter, compelled her daughter to take his male organ into her mouth. Then one Swapna Das went to that shop and noticed the same and thereafter, raised alarm and then one another lady namely, Munni arrived at there and noticed the zip of the pant of the accused open and asked her daughter to disclose the matter to them.

4. Mr. Biswas, learned counsel for the accused, submits that the accused was arrested on 04.07.2022, and since then he has been languishing in jail hazoot for last 179 days, and in the meantime the IO has completed the investigation and submitted charge sheet against the accused to stand trial under section 376 of the IPC read with section 4 of the POCSO Act. Thereafter, the learned court below has framed charge against the accused under section 376 of the IPC read with section 4 of the POCSO Act and examined the victim girl and her mother as PW-1 and PW-2. Mr. Biswas, referring to the evidence of P.W.1 and 2 submits that version of the victim is not at all believable as she has changed her version at stage to stage and that the case has been filed falsely on being instigated by

some women of the locality and that the accused is an old person and he is ready to participate in the trial and therefore, it is contended to allow this petition.

5. On the other hand, Ms. Bora, learned Additional Public Prosecutor has submitted that the accused is charged under section 376 of the IPC read with section 4 of the POCSO Act and that in their evidence the victim as PW-1 and the mother of the victim as PW-2 have implicated the accused with the offence alleged in the FIR, and that the offences are serious in nature and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned court below and also perused the additional affidavit submitted by the accused enclosing the statement of the victim girl and her mother recorded by the learned court below during the trial.

7. It appears from the record of the learned court below that the IO has cited as many as 12 witnesses in the charge sheet and further it appears from the Additional Affidavit filed by the accused that out of the 12 witnesses 2 witnesses have already been examined by the learned court below. A three Judge Bench of Hon'ble Supreme Court in the case of **Ranjitsingh Brahmajeetsingh Sharma** reported in **(2005) 5 SCC 294**, while dealing with scope and power of courts to grant bail, held that-

“A priori, the exercise to be under taken by the court at this stage--of giving reasons for grant or non-grant of bail-- is markedly different from discussing

merits and demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

8. Taking guidance from the exposition of law in the aforementioned case, I have carefully gone through the evidence of P.W.-1 and 2, without making any comment on the merit and demerits of their evidence and also considering the facts and circumstances on the record as well as the period of detention and also the stage of trial, where the principal witnesses have already been examined, this court is of the view that a case for granting bail to the accused is made out.

9. 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 Act, Kamrup (M) at Guwahati, the accused be enlarged on bail.

10. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant