

GAHC010197542023



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

Case No. : Bail Appln./3107/2023

SAMIRAN DAS
R/O. SAULKUCHI BAZAR, P.S. SAULKUCHI, DIST KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP.ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

12.09.2023

Heard Mr. S Munir, learned counsel for the petitioner. Also heard Mr. RJ Baruah, learned Additional PP, Assam assisted by Mr. SN Krishnatraya, learned counsel for the informant.

2 This is an application filed under Section 439 Cr.P.C. praying for regular bail to the petitioner, Sri Samiran Das, who was arrested on 19.08.2023 in

connection with Nalbari PS case No. 326/2023 under Section 493/420/387/506/34 IPC.

3. Learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in this case. Investigation is almost over and statement of accused has thoroughly been interrogated by the investigating agency. There is no legal evidence against the present applicant to connect them with the alleged offence. The learned Counsel further submits that the applicant is in custody since 19.08.2023 and the conclusion of trial will take sufficient time. On the aforesaid grounds, prayer is made to release the applicant on bail.
4. Learned Additional Public prosecutor for the state has seriously objected to the grant of bail for the reason that the petitioner has committed an offence under Section 376 IPC inasmuch as from the material available on record, it is seen that the consent given by the victim was based on misconception of fact and therefore such consent for physical relation was not a legal consent but a consent based on misconception.
5. Learned counsel for the informant also submitted on the similar line while assisting the learned Additional PP.
6. Considered the submission as well as perused the case diary.
7. The case diary reveals that investigation is at the advance stage. The statement of the victim as well as her parents and many other witnesses have been recorded under Section 161 Cr.P.C. The petitioner has been behind the bar since his date of arrest and his statement has also been recorded. Whether the consent given by the victim after her engagement with the accused is a consent based on misconception fact or not is a

subject matter of trial inasmuch as the FIR has already been registered under Section 376 IPC.

8. Without commenting on the merit of such assertion/ allegation, taking into consideration the stage of investigation and the period of detention of the petitioner, this court is of the view that no further custodial detention shall be necessary for further investigation and/ or conclusion of the investigation. Accordingly, the bail application stands allowed.
9. Accordingly, it is directed that the applicant be released on bail on his furnishing a personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one solvent surety in the like amount to the satisfaction of the learned CJM, Nalbari with the following conditions.
 - (1) The petitioner shall not hamper with the investigation, or tamper with the evidence of the case,
 - (2) The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer,
 - (3) The petitioner shall appear before the I/O after every 10 days till his appearance is dispensed with by the I/O and also shall appear before the I/O as and when called for by the I/O.
10. Bail application stands disposed of.

JUDGE

Comparing Assistant