

GAHC010199482023



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

Case No. : Bail Appln./3155/2023

ASAR UDDIN
S/O MD. SURMAN ALI R/O VILL. MASLY P.O. BHANGA BAZAR DIST.
KARIMGANJ ASSAM PIN 788701

VERSUS

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

2:RABI DAS
S/O LT SUDHANGSHU DAS R/O VILL. SOUTH MASLEY P.S BADARPUR
DIST. KARIMGANJ ASSAM PIN 788701

Advocate for the Petitioner : MR. A S TAPADER

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

14.11.2023

Heard Mr D Das, learned Senior Counsel for the petitioner, assisted by Mr A S Tapader, learned counsel and Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. The petitioner, Asar Uddin, has filed this application under Section 439 CrPC, with a prayer for bail as he is in custody since 27.05.2023, in connection with Special

Sessions (POCSO) Case No. 161/2023, arising out of Badarpur PS Case No. 136 of 2023, registered under Section 376 (3) IPC and Section 6 of the POCSO Act.

3. Heard Mr B Sarma, learned Additional Public Prosecutor for the State of Assam and Mr S Sarkar, learned counsel for the informant.

4. It is submitted on behalf of the petitioner that earlier this case was booked under Section 354 IPC, read with Section 8 of the POCSO Act, on the basis of an FIR lodged on 18.05.2023. The victim's statement was recorded under Section 161 CrPC on the same day and she was forwarded for medical examination on the same day. After hearing about the incident, the father of the victim lodged the FIR and at that time, Section 376 (3) IPC, read with Section 6 of the POCSO Act was not incorporated, but on a later date, Section 376 (3) IPC and Section 6 of the POCSO Act was incorporated along with Section 354 IPC, read with Section 8 of the POCSO Act.

5. It is submitted that the victim may have been tutored. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in ***Radhey Shyam – Vs- State of Rajasthan; (2014) 5 SCC 389***, wherein it was observed that-

“12. In Panchhi, after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy prey to tutoring. This Court further observed that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by learned counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness's evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation. We will scrutinize PW-2 Banwari's evidence in

light of the above principles.”

6. Learned counsel for the petitioner has also relied on the decision of Hon’ble the Supreme Court in ***Amar Singh –Vs- State of Punjab; (1987) 1 SCC 679***, wherein it was observed that-

“10. xxxx xxxx xxxx xxxx

Thus the evidence of P.W. 5. is totally inconsistent with the medical evidence. This Court in Ram Narain v State of Punjab AIR (1975) SC 1727 has laid down that if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. There is no explanation for the apparent total inconsistency between the evidence of P.W. 5 and the medical evidence.”

7. Per contra, it is submitted by the learned Additional Public Prosecutor and the learned counsel for the informant that if the petitioner is enlarged on bail, the students of the school may be threatened by the petitioner and there is every possibility that evidence may be tampered in this manner. The learned counsel for the informant and the learned Additional Public Prosecutor has relied on the decision of the Hon’ble the Supreme Court in ***Prasanta Kumar Sarkar –Vs- Ashis Chatterjee; (2010) 14 SCC 496***, wherein it was observed that-

“We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

8. The learned counsel for the informant and the learned Additional Public Prosecutor has also relied on the decision of the Hon’ble the Supreme Court in ***Kalyan Chandra Sarkar –Vs- Rajes Ranjan Alias Pappu Yadav & Another; (2004) 7 SCC 528***, wherein it was observed that-

“The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;*
- (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (c) Prima facie satisfaction of the Court in support of the charge;”*

9. I have considered the submissions at the Bar with circumspection and I have also perused the Case Diary.

10. It is true that the petitioner is behind bars for 171 days.

11. Charges have been framed against the petitioner in the relevant case. The evidence

of the victim is yet to be recorded. The victim may feel threatened to depose in the Court if the petitioner is enlarged on bail. The petitioner occupies a formidable post in the school and most of the witnesses are students of the school. At this juncture, the petitioner is not enlarged on bail. Meanwhile, the learned trial Court is directed to expedite the trial and immediately record the statement of the victim.

12. The petition is rejected at this stage, with a liberty to the petitioner to approach the learned trial Court for bail after the evidence of the victim is recorded and the petition may be considered as per merits of the case.

JUDGE

Comparing Assistant