

GAHC010208012023



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

Case No. : Bail Appln./3279/2023

MD FAYZIL HOQUE @ MAMU
S/O MD JUNAB ALI
R/O KISMOT KATHAMI
P.S. BOKO
DIST. KAMRUP, ASSAM

VERSUS

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

2:MONIRAM HORO
W/O JANASH HORO
R/O BEBEJIA
P.S. SARUPATHAR
DIST. GOLAGHAT
ASSA

Advocate for the Petitioner : MD K RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 15-11-2023

Heard Mr. K. Rahman, learned counsel for the petitioner. Also heard Mr. B.

Sarma, learned Additional Public Prosecutor, Assam.

This Bail Application under Section 439 of the CrPC has been filed by the accused-petitioner, namely, **Md. Fayzil Hoque @ Mamu**, for grant of regular bail in connection with **Special (P) Case No. 37/2023**, pending before the **Special Judge, POCSO, Golaghat**, arising out of **Sarupathar Police Station Case No. 14/2023**, under **Section 376 IPC, Section 9 of the Prohibition of Child Marriage Act, 2006, read with Section 6 of the POCSO Act**. He was arrested on 16.03.2023 and since then has been languishing in jail.

It is submitted that the accused-petitioner is the husband of the victim and they are leading conjugal life and a child was also born out of their wedlock. He is a law abiding person having roots in the society. It is also submitted that the FIR has been lodged by the neighbour of the victim who is not related to the victim or his family members. There is no allegation against the petitioner that he has ever committed any such offence which falls under the POCSO Act. It is further submitted by the learned counsel for the petitioner that the trial is going on and as the accused-petitioner is facing the trial, further custodial detention may not be necessary. In view of the above and considering the period of detention, bail may be granted to the accused-petitioner on any such conditions as may be imposed by the Court.

Learned Additional Public Prosecutor has opposed in grant of bail to the accused-petitioner and submits that bail may be considered only after examination of the victim girl.

I have considered the submissions of the learned counsel for the parties and have also perused the LCR including the statements of the witnesses recorded so far. The victim has not been examined yet.

Considering the materials found in the record as well as the length of detention of the accused-petitioner in custody, this Court is of the view that further custodial detention of the accused-petitioner is not necessary in the interest of investigation of

the case.

Accordingly, it is hereby directed that the accused-petitioner, named above, shall be released on bail in connection with **Special (P) Case No. 37/2023**, pending before the **Special Judge, POCSO, Golaghat**, arising out of **Sarupathar Police Station Case No. 14/2023**, under **Section 376 IPC, Section 9 of the Prohibition of Child Marriage Act, 2006, read with Section 6 of the POCSO Act**, on furnishing of bail bond of Rs. 30,000/- with two sureties, each of the like amount to the satisfaction of the learned Special Judge, POCSO, Golaghat.

The direction for bail is further subject to the conditions that the accused-petitioner:

- (a) shall not leave the territorial jurisdiction of the learned Special Judge, POCSO, Golaghat, without prior written permission from him/her;
- (b) shall not hamper with the investigation, or temper with the evidence of the case;
- (c) 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 him from disclosing such facts to the Court or to any police officer.

In terms of the above, this Bail Application stands disposed of.

JUDGE

Comparing Assistant