

GAHC010229352023



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

Case No. : Bail Appln./3659/2023

MD. SAIB ALI
S/O MD. HASMAT ALI
R/O PATIKIBORI
P.S. MAYONG
DIST. MORIGAON, ASSAM

VERSUS

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

2:MUSTT. JOYNAB BIBI (INFORMANT)
W/O MD. MOINUL HOQUE
VILL- PARTIKBORI
P.S. MAYONG
DIST. MORIGAON
ASSA

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM (R1)

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

09.11.2023

Heard Mr. S.M. Abdullah P, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, appearing for the State of Assam as well as Mr. S.H. Sikder, who is appearing for the informant (respondent No. 2).

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Saib Ali, who has been detained behind the bars since last 10.03.2023 (last 245 days) in connection with Jagiroad P.S. Case No. 80/2023, under Sections 363/368 of the Indian Penal Code read with Section 4 of the POCSO Act, 2012 which is pending before the Court of learned Special Judge, POCSO, Morigaon.

Learned counsel for the petitioner has submitted that the petitioner has been detained behind the bars since last 245 days. Though the charges were framed against the petitioner on 30.05.2023, however, till now no witness has been examined in the said trial.

Learned counsel for the petitioner has further submitted that the petitioner is ready to face trial and ready to co-operate in his trial.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Jagiroad P.S. Case No. 80/2023 and has submitted that there are incriminating materials against the present petitioner in the case diary and has opposed the grant of bail to the present petitioner.

On the other hand, Mr. S.H. Sikder, who is appearing for the respondent No. 2 has furnished an affidavit sworn by the victim girl wherein, it is stated that the victim girl has no objection if the present petitioner is allowed to go on bail at this stage.

Learned counsel for the informant has also submitted that the informant is the maternal aunt of the victim girl.

I have considered the submissions made by the learned counsel for both the sides and have gone through the materials available on record. It appears that the present petitioner has undergone a long incarceration of 245 days. It also appears that though the charges were framed on 30.05.2023. Thereafter, several dates were given by the prosecution side. However, till now, not even a single witness has been examined in the said case.

Considering the above fact, along with the fact that the victim has not opposed the grant of bail to the present petitioner, further custodial detention of the present petitioner does not appear to be necessary for fair completion of the investigation of this case.

Hence, the petitioner, namely, Md. Saib Ali is hereby allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Special Judge, POCSO , Morigaon with following condition that:-

(i) the petitioner shall appear before the learned Trial Court as and when so required by the learned Trial Court and shall co-operate in the trial; and

(ii) the petitioner shall not directly or indirectly make any inducement threat or promise to the first informant/victim or to any person who may be acquainted with the facts of the case so as to dissuade such person/victim to disclose such facts before the learned Trial Court during the trial.

With the above observations, this bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant