

GAHC010232372022



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

Case No. : Bail Appln./3071/2022

MONOWAR ALI
S/O- LT. SABED ALI, R/O- VILL- SASLAPARA, P.S. CHAPAR, PERMANENT
ADDRESS- VILL- TUSHPARA, P.S. BILASIPARA, DIST.- DHUBRI, ASSAM,
PIN- 783348

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.02.2023

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Addl. P.P. for the State.

2. The petitioners, namely, Monowar Ali, who was arrested on 25.08.2022 in connection with Chapar P.S. Case No. 155/2022 under Sections 366 IPC read with Section 8(2) of the POCSO Act, are seeking regular bail under section 439 Cr.P.C. In the said case, charge-sheet was submitted on 06.10.2022, and the said case is now being tried as Special (POCSO) Case No. 32/2022 under Sections 366-A IPC read with Section 4 of the POCSO Act.

3. The learned counsel for the petitioner has submitted that there is no sign of an early trial of the case. It is also submitted that the medical report of the victim does not disclose any injury or recent sexual assault. Therefore, it is submitted that the petitioner be released on bail.

4. The learned Addl. P.P. has perused the scanned copy of the case diary as received from the learned trial Court and has opposed the prayer for bail.

5. On a perusal of the scanned copy of the case diary, it appears that the victim, in her statement under Sections 161 and 164 Cr.P.C. has implicated the petitioner of sexually assaulting her. As per medical report, the radiological age of the minor victim is 14-15 years and as per entry made in the seized school certificate, the date of birth of the minor victim is recorded as 21.06.2008. Therefore, on the date of alleged sexual assault, the minor victim was 14 months 2 month 1 day old.

6. The victim was sexually assaulted on 22.08.2022 and she was rescued and recovered on 23.08.2022, but she was medically examined only on

30.08.2022, and therefore, merely because the medical officer had opined that there was no sign of recent sexual intercourse, the accusation against the petitioner cannot be brushed aside, which can at best be examined at the stage of trial and in the considered opinion of the Court, at the stage of consideration of prayer for bail, the medical examination report cannot be a ground to discard the prosecution case that the petitioner had sexually assaulted the minor victim girl.

7. In respect of the submissions that there is no chance of an early trial, it may be mentioned that the scanned copy of the order-sheet of the learned trial Court reveals that charge-sheet was submitted in this case on 06.10.2022, and charges were framed on 02.11.2022. However, for want of APP and defence counsel, the case was adjourned on 15.11.2022. The learned Addl. P.P. has submitted that the counsel are boycotting the court proceeding of the Presiding Officer of the said learned Court. If that be the case that the counsel for the petitioner is not co-operating with the trial, it would not constitute a ground to enlarge the petitioner on bail, as delay cannot be attributed to the Court. The petitioner also owes a duty to cooperate with trial so that the trial can be expedited.

8. Hence, in light of the investigation carried out so far, the Court is of the considered opinion that under the circumstances, the petitioner above named is not entitled to be released on bail. Accordingly, the prayer for bail is rejected at this stage.

9. Application is disposed of.

10. The Registry shall not issue any certified/uncertified copy of any

part of the scanned copy of the record received from the learned trial Court.

JUDGE

Comparing Assistant