

GAHC010232782022



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

Case No. : Bail Appln./3087/2022

MD. ABDUL HAMID
S/O LT. SABED ALI
VILL- SALMARA, P.O. SALMARA
P.S. KAMPUR
DIST .NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:MUSSTT. ANOWARA BEGUM
W/O- ABUL HUSSAIN
VILL- SALMARA
PS- KAMPUR
PIN- 782425

DIST- NAGAON (ASSAM)

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

03.01.2023

Heard Mr. S.M. Abdullah P, learned counsel for the accused and Mr. B.B. Gogoi, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Md. Abdul Hamid, who has been languishing in jail hazot in connection with the Special POCSO Case No. 54/2022, under Section 376[3] of the IPC read with section 6 of POCSO Act arising out of Kampur PS Case No. 66/2021 under section 376[3] of IPC read with section 6 of POCSO Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by one Musstt. Anowara Begum, on 29.05.2021, to the effect that accused Abdul Hamid, who happened to be her father, has taken her daughter Smti X [name withheld] to his house, 8 months back for attending the household works. Thereafter, her father committed rape upon her daughter by showing indecent photographs in the mobile. As a result, her daughter become pregnant and also her father threatened to kill her daughter if she disclose the matter to others and now her daughter has been carrying pregnancy of 6 months.

4. Mr. Abdullah P, learned counsel for the accused submits that the accused is behind the bar for last 584 days and that out of the 9 cited witnesses, one witness has been examined by the prosecution side and that the IO during course of investigation has conducted DNA test of the alleged baby given birth by the victim and the result reveals that the present accused is not the biological father of the baby given birth by the victim, and therefore, it is contended to allow this petition. Mr. Abdullah P, further assured that the accused will appear before the court regularly and will participate in the trial.

5. On the other hand Mr. Gogoi, learned Addl. P.P. submits that though the DNA report has failed to establish that the present accused is the biological father of the baby given birth by the victim, yet, the victim girl in her statement has categorically stated that the accused is the author of the crime and that 8 witnesses are yet to be examined, and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. It appears that the accused is behind the bar for last 584 days and till date out of the 9 witnesses cited in the charge sheet only one witness, i.e. the victim, has been examined and some important witnesses are yet to be examined. It is, however, a fact that the DNA report reveals that the present accused is not the biological father of the baby given birth by the victim.

8. But in view of the materials available on the record and also in view of the evidence of the victim, without commenting on the merit of the same, this court is of the view that no case for granting bail to the accused is made out, while there is perceived threat to the life of the victim from the accused.

9. Accordingly the petition stands dismissed.

10. However, the learned court below is directed to expedite the trial and

if necessary to take recourse of section 309[1] of the Cr.P.C.

JUDGE

Comparing Assistant