

GAHC010232782023



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

Case No. : Bail Appln./3670/2023

SADDAM HUSSAIN
S/O GULZAR HUSSAIN VILL. HATIMURIA W NO. 4 P.S MOIRABARI DIST.
MORIGAON ASSAM

VERSUS

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

2: NAZIRUL ISLAM
S/O LT. NAZRUL ISLAM VILL. HATIMURIA W NO. 4 P.S. MOIRABARI DIST.
MORIGAION ASSA

Advocate for the Petitioner : MS A BEGUM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.10.2023

Heard Ms. A. Begum, learned counsel for the petitioner and Mr. KK Das, learned Addl. Public Prosecutor for the State respondent No. 1

This is an application under Section 439 Cr.P.C., filed by the petitioner, namely Saddam Hussain seeking bail who was arrested on 03.10.2023 in

connection with Moirabari P.S. Case No. 210/2023 (Corresponding to G.R. Case No. 1686/2023) under Section 376 IPC read with Sections 9/10/11 of the Prohibition of Child Marriage Act read with Sections 6/17 of the POCSO Act.

The learned counsel for the petitioner has submitted that both the petitioner and the victim girl were minor at the time of incident and they had love affairs. The girl had eloped with the petitioner, their marriage was solemnized and out of their wedlock, a child was also born. Learned counsel for the petitioner also submits that this is not a case where the offence under the POCSO Act has been attracted. Apart from that, there is no allegation against the petitioner made by the victim or her family members that the petitioner has committed the offence which comes under the provisions of POCSO Act. Under such backdrop, the petitioner may be enlarged on bail.

On the other hand, the learned Addl. PP has made objection for granting bail to the petitioner by stating that the victim was minor when the incident occurred.

Case diary is received and perused the same including the statement of the victim recorded under Section 164 Cr.P.C. which reveals that the victim had love affairs with the petitioner since 2021 and she had eloped with him. Thereafter, their marriage was solemnized and out of their wedlock, a child was born and she is leading conjugal life with the petitioner peacefully.

Considering the fact that though the victim was minor she has been eloped with the petitioner. However, no allegation was made against the petitioner by the victim or her family members that the petitioner had committed any such offence which falls under the provisions of POCSO Act.

In view of the above, prayer for bail of the petitioner is allowed.

Accordingly, it is directed that the accused/ petitioner above named be released on bail in connection with Moirabari P.S. Case No. 210/2023 (Corresponding to G.R. Case No. 1686/2023) under Section 376 IPC read with Sections 9/10/11 of the Prohibition of Child Marriage Act read with Sections 6/17 of the POCSO Act on furnishing a bond of Rs. 10,000/- (Rupees ten thousand) with 1 (one) suitable surety of like amount to the satisfaction of the learned Special Judge, Morigaon.

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, Morigaon, without prior written permission from him/her;
- (b) shall not hamper with the investigation of the case and tamper with the evidence; and
- (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/ her from disclosing such facts to the Court or to any police officer.

In terms of the above, this bail application stands disposed of.

Return the case diary.

JUDGE

Comparing Assistant