

GAHC010235322023



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

Case No. : Bail Appln./3748/2023

MRINAL BASUMATARY
S/O BHARAT BASUMATARY R/O ANAND NAGAR CHEUNI ALI P.O. JORHAT
DIST JORHAT ASSAM PI 785002

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

2:INKAMLAK NEWMAI
BOXING COACH AND IN CHARGE SPORTS AUTHORITY OF INDIA
TRAINING CENTRE NAHARLAGUN ARUNACHAL PRADESH

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.10.2023

Heard Mr. M. Dutta, learned counsel for the petitioner. Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor for the State/respondent No.1 and Ms. A. Begum, learned counsel for the respondent No. 2.

2. This is an application made under **Section 439 Cr.P.C.**, seeking bail by the petitioner, namely, **Mrinal Basumatary**, in connection with **Special(POCSO) Case No. 94/2023**(arising out of Panigaon P.S. Case No. 25/2023 corresponding to G.R. Case No. 484/2023) pending before the court **Learned Special Judge(POCSO) Lakhimpur, North Lakhimpur**, registered under **Section 10 of POCSO Act**.

3. The background of the case is that the informant who is the Weightlifting Coach, Sports Authority of India(SAI), STC, Solalgaon, Assam lodged an FIR stating *inter alia* that the present petitioner who is Swimming Coach, In-charge, Sports Authority of India(SAI), Training Centre, Solalgaon, Assam, sexually harassed the minor girls, residential athletes of the said SAI Training Centre, Solalgaon. Subsequently, a case was registered vide Panigaon P.S. Case No. 25/2023 under Section 10 of POCSO Act and after completion of investigation, charge-sheet was submitted accordingly under such provision of law. The petitioner, after coming to know about filing of charge-sheet, showing him as absconder, thereafter, approached this Court by filing a criminal petition vide No. 933/2023 praying for quashing of FIR. As per order of this Court, the criminal petition was disposed of with a direction to the petitioner to appear before the learned trial court. The petitioner also filed an undertaking that he would appear before the learned trial court on each and every date. After considering the submissions made by the learned counsel for the parties, this Court directed the petitioner to appear before the learned trial court on 04.10.2023 and to apply for regular bail and in the event of filing such application, the learned trial court shall consider the same as per provision of law.

4. The learned trial court fixed 20.09.2023 for appearance of the

petitioner but on that day, from the side of the petitioner, a petition was filed stating that this Court has directed him to appear before the learned trial court on 04.10.2023 and in that petition, prayer was made to condone the absence of the petitioner for the day. Accordingly, the learned trial court was pleased to condone the absence of the petitioner and fixed the matter on 04.10.2023. On 04.10.2023, the petitioner appeared before the learned trial court by filing a petition seeking regular bail but the learned trial court instead of properly appreciating the guidelines laid down by the Hon'ble Supreme Court in the case of Santender Kumar Antil v. CBI and Anr. reported in (2021) 10 SCC 773, rejected the bail prayer of the petitioner by holding that the petitioner has not appeared in response to the summons issued by the learned trial court. Thereafter, the petitioner has filed this bail application.

5. Learned counsel for the petitioner has submitted that the Hon'ble Supreme Court has made categorical that the judgment of Santender Kumar Antil(supra), is the law of the land and the principles laid down by it for bail to an accused, including those not arrested at the time of filing of the charge-sheet, must be followed by all concerned courts.

6. It is also the submission of the learned counsel for the petitioner that the charge-sheet has already been laid and the case is fixed for production of the accused. As per charge-sheet, there are 12 prosecution witnesses to be examined during trial. As such, it will take time in completing the trial. Under such circumstances, further custodial detention of the petitioner is not at all required. To make out the defence, the release of the petitioner is highly required in order to consult with his lawyer to defend his case properly.

7. In response, Mr. Kaushik, learned Additional Public Prosecution for the State has vehemently objected in granting bail to the petitioner by stating

that the petitioner had committed such offence of sexual abuse to the minor children which are grievous in nature. Considering the nature of offence, prayer of the petitioner may not be considered at this stage.

8. I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of LCR.

9. It is true that the alleged offence against the accused/petitioner is under Section 10 of POCSO Act which deals with aggravated sexual assault. But it appears that the charge-sheet has already been laid and trial is about to initiate. As the petitioner is the government employee, there is no chance of his absconding. As the charge has not yet been framed and the trial has not yet been commenced, it will take 2/3 months or more to complete the proceedings.

10. Under such backdrop, this Court is of the view that further custodial detention of the accused-petitioner is not necessary.

11. Accordingly, the petitioner, named above, shall be released on bail in connection with **Special(POCSO) Case No. 94/2023**(arising out of Panigaon P.S. Case No. 25/2023 corresponding to G.R. Case No. 484/2023) pending before the court of **Learned Special Judge(POCSO) Lakhimpur, North Lakhimpur, under Section 10 of POCSO Act**, on furnishing bail bond of **Rs.30,000/-** with **two suitable sureties** of the like amount to the satisfaction of learned Special Judge(POCSO) Lakhimpur, North Lakhimpur, Assam.

12. The direction for bail is further subject to the condition that the petitioner:

(a) shall not leave the territorial jurisdiction of learned Special Judge(POCSO) Lakhimpur, North Lakhimpur, Assam without prior written permission from him/her.

13. The learned trial court is at liberty to impose any condition(s) as it

deems fit and proper at the time of releasing the petitioner/accused on bail to procure his attendance during trial.

14. The bail application stands disposed of accordingly.

JUDGE

Comparing Assistant