

GAHC010237622022



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

Case No. : Bail Appln./3216/2022

ASHADUL HOQUE
S/O INNAS ALI
R/O VILL- KOPAHARTARI
P.S. AND DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR N AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 20-02-2023

Heard Mr. N.J. Dutta, learned counsel for the accused/applicant. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, Ashadul Hoque, who has been languishing in jail *hajot* since 04.05.2022 in connection with Special POCSO

Case No. 94/2021 (corresponding to Barpeta PS Case No.753/18), under Sections 366(A)/372/34 of the IPC read with Section 4 of the POCSO Act, for granting bail.

3. It is to be noted that Barpeta PS Case No.753/2018, has been registered on the basis of one FIR lodged by Smti. 'X' (name withheld) on 10.04.2018, wherein it is alleged that on 01.04.2018, one Ashadul Hoque, giving false assurance of marriage, took her and her minor sister, aged about 14 years, from their house to Kayakuchi Bazar and handed over them to one Habibar Rahman and Jahangir, who have taken them to Guwahati, and thereafter, to Bongaigaon and committed rape upon them on 08.04.2018 and thereafter sold them to an international women trafficker, but, somehow they managed to escape from their clutches and reached their house on 09.04.2018.

4. Mr. Dutta, learned counsel for the accused/applicant, submits that investigation has already been completed and charges have already been framed and three witnesses are also examined by the learned Court below.

Mr. Dutta further submits that the accused has also preferred another Bail Application, being BA No.2771/2022, and the same was dismissed by this Court vide order dated 10.11.2022, and since then, trial could not be proceeded as one of the victim girls is living somewhere in Delhi and Lucknow and she could not be traced out. Mr. Dutta further submits that though the case is registered under Sections 366[A]/376/34 IPC read with Section 4 of the POCSO Act, yet the aforementioned Sections are not attracted against the present accused, and moreover, the accused is ready to face the trial and there is no chance of his absconding and he will appear before the Court below on each date(s) and, therefore, it is contended to allow the application.

- 5.** On the other hand, Mr. Lahkar, learned Additional Public Prosecutor, Assam has vehemently opposed the application on the ground that the offences are serious in nature and one of victim girls is yet to be examined and, therefore, it is contended to dismiss the petition.
- 6.** Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record as well as the status report called for from the learned Court below and also the order dated 10.11.2022, passed in BA No.2771/2022.
- 7.** The status report received from the learned Court below indicates that charges were framed against the accused under Sections 366/370/109/376/34 IPC read with Sections 4/17 of the POCSO Act and three witnesses have already been examined and one of the victims, who is also the informant of the case, is missing and, therefore, her evidence could not be recorded till date.
- 8.** It also appears from the documents placed on record that the earlier bail application was rejected on 10.11.2022, and since then, more than three months elapsed and till date, the case is pending in the same stage.
- 9.** As it is being assured by the learned counsel for the accused that the accused will participate in the trial and that he will appear before the learned Court below and as one of the victim girls could not be traced out, as she is missing and there is no immediate prospect of conclusion of trial. He is behind the bar for last seven and half months and as submitted by Mr. Dutta, the learned counsel for the accused, the allegation under Section 376 IPC and 4 of the POCSO Act is not attracted against him.
- 10.** Having considered the above, this Court is inclined to allow this petition and accordingly it is provided that on furnishing a bond of Rs. 50,000/- (Rupees

Fifty Thousand) only, with one surety of like amount to the satisfaction of the learned Additional Sessions Judge-cum-Special Judge, POCSO, Barpeta, the accused namely, Ashadul Hoque, be enlarged on bail, in connection with Special POCSO Case No.94/2021 (corresponding to Barpeta PS Case No.753/18) under Sections 366[A]/372/34 of the IPC read with Section 4 of the POCSO Act.

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

The case diary be returned.

JUDGE

Comparing Assistant