

GAHC010244802023



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

Case No. : Bail Appln./3926/2023

MAHADEV DEKA
S/O- LATE BALIRAM DEKA
R/O- HOUSE NO. 131
KONADHORA, RAJIB GANDHI PATH
KHANAPARA, P.S. DISPUR, GUWAHATI
DISTRICT- KAMRUP (METRO),
ASSAM.

VERSUS

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

2:SHRI BHRIGO RAM DAS
S/O LATE DHIRESWAR DAS
R/O HOUSE NO. 5
JANA PATH

KHANAPARA
OPP. KENDIRIYA
VIDYALAYA
KHANAPARA
P.S. DISPUR
GUWAHATI
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

06.11.2023

Heard Mr. B.K. Mahajan, learned counsel appearing for the accused petitioner as well as Mr. R.R. Kaushik, learned Addl. P.P., Assam appearing for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused-petitioner, namely **Mahadev Deka** has prayed for grant of bail in connection with **Dispur P.S. Case No. 2009/2023** under Section **354B** of the IPC read with Section **8** of the POCSO Act.

3. The case diaries of Dispur P.S. Case No. 2009/2023 of the present bail application and Dispur P.S. Case No. 2011/2023 under Sections 448/294/506/323/34 of the IPC registered on the basis of the FIR lodged by the accused petitioner are placed before the Court.

4. The notice issued to the respondent No.2/informant by dasti mode has been refused to be acknowledged on 01.11.2023 vide Affidavit.

5. Mr. B.K. Mahajan, learned counsel appearing for the accused petitioner, submits that the accused petitioner, who is aged about 65 years, has been in judicial custody for 23 days despite being absolutely innocent. Mr. Mahajan further submits that this case is the counter case of the case, which the accused petitioner filed on 14.10.2023 alleging physical assault etc. on him over a dispute relating to non-delivery of goods on credit. Mr. Mahajan submits that from the contents of the F.I.R. and Forwarding Report, it appears that no non-bailable offence under Section 354B of the IPC and Section 8 of the POCSO Act

can be attributed in the instant case.

6. Mr. R.R. Kaushik, learned Additional Public Prosecutor, submits that although the victim girl, aged about 13 years, in her statements under Section 161 and 164 Cr.P.C. has implicated the accused petitioner, there is evidence of independent witness contradicting her version and thus, shows a different story of the occurrence, where at a subsequent moment, the accused petitioner was assaulted by the father of the alleged victim girl.

7. The F.I.R. reveals the allegation that on 14.10.2023 at about 11.30 am, when the daughter of the informant aged about 13 years went to the shop of the accused petitioner for bringing some articles, at the time of making payment, he touched on her private part upon which the victim raised hue and cry and returned home.

8. Perused the above mentioned two case diaries.

9. It is noticed that the accused petitioner has been in judicial custody since 15.10.2023, that is, for 23 days.

10. The medical report is not available on the case diary.

11. The Birth Certificate shows that the date of birth of the victim girl is 06.09.2010 and accordingly, her age was 13 years 1 month 9 days on the date of the alleged occurrence.

12. The victim in her statements recorded under Sections 161 and 164 Cr.P.C, has implicated the accused petitioner. There is, however, independent evidence revealing a different story of the actual occurrence.

13. It is further noticed that the accused petitioner had also filed a cross F.I.R. arising out of the same occurrence, where the investigation is yet to be

completed.

14. Therefore, this Court is of the opinion that further continuation of detention of the accused petitioner in the interest of the ongoing investigation of the case is not warranted.

15. Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.40,000/- (Rupees Forty Thousand)** with one surety of like amount to the satisfaction of learned **C.J.M., Kamrup(M), Guwahati** subject to the following conditions-

- i) That the accused petitioner shall cooperate with the Investigating Officer as and when required; and
- ii) That the accused petitioner 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 from disclosing such facts to the Police Officer or the Court.

Return the case diary.

The bail application stands disposed of.

JUDGE

Comparing Assistant