

GAHC010244942023



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

Case No. : Bail Appln./4044/2023

BIKKY SARKAR
S/O SRI BIMAL SARKAR
C/O SRI BHAJAN SAHA
R/OLALGANESH SRINAGAR PATH,
BY LANE NO. 2,
HOUSE NO. 1,
P.S. FATASIL AMBARI
DIST. KAMRUP (METRO), ASSAM

VERSUS

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

2:INDRANI DEBNATH
D/O SRI DILIP DEVNATH
R/O BHASKAR NAGAR
EKATA PATH

HOUSE NO. 15
P.S. FATASIL AMBARI
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MD A H ANSARI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 21.12.2023

Heard Mr. A. H. Ansari, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent and Ms. M. Barman, learned Legal Aid Counsel appearing on behalf of the respondent No. 2.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been arrested on 19.01.2023 in connection with Sessions (Special) Case No. 45/2023, arising out of All women P.S. Case No. 05/2023, under Section 376D of the Indian Penal Code *read with* Section 6 of the POCSO Act, *read with* Section 67 (B) of the I.T. Act.

Scanned copy of the LCR has already been received. Perused the same. Heard both sides.

It is submitted by the learned counsel for the petitioner, Mr. Ansari, that the accused/petitioner is behind the bar since 19.01.2023 and at present, out of 8 (eight) numbers of witnesses, evidences of 7 (seven) numbers of witnesses are already being recorded and considering the length of detention, the bail prayer of the present accused/petitioner may be considered. Further it is submitted that one of the co-accused is granted with the privilege of bail by the

learned Special Judge. Furthermore, the accused/petitioner is a permanent resident of his addressed locality and there is no chance of absconding if he is enlarged on bail. Rather, he will regularly appear before the Court as and when the date is fixed by the Court. Accordingly, it is prayed for allow the accused/petitioner on bail.

On the other hand, Mr. Goswami, learned Additional Public Prosecutor, has objected to the bail prayer and submitted that the present case involves a very serious nature of offence and the medical report and the statement of the victim incriminated the present accused/petitioner. Further he submitted that out of the 8 (eight) witnesses, 7 (seven) numbers of witnesses are already been examined and after examination of the last witness, the matter may be heard and may finally be decided. He accordingly submitted that without going by the merit of the case and the nature of evidence recorded by the learned Special Judge, the bail prayer of the accused can be rejected also on the ground that the case is serious in nature and the same is at the stage of conclusion of trial.

In this context, Ms. M. Barman, learned Legal Aid Counsel for the respondent No. 2, also submitted that this case is of offence in very serious nature and the victim girl has suffered a lot due to commission of rape on her and accordingly, she objected to the bail prayer of the accused/petitioner. Further, the case is already at the stage of end of trial and hence, at this stage, the bail should not be granted to the accused/petitioner.

After hearing the submissions made by the learned counsels appearing on behalf of the parties, I have perused the scanned copy of the case record along

with the Case Diary as well as the relevant documents. It is seen that the case is registered under Section 376D of the Indian Penal Code *read with* Section 6 of the POCSO Act *read with* Section 67 (B) of the I.T. Act and out of 8 (eight) numbers of witnesses, 7 (seven) numbers of witnesses are already been examined by the learned Court below and if, at this stage, the accused is allowed to go on bail, the probability of absconding of the accused is also cannot be denied. Further it is seen that the co-accused of the case was granted with the privilege of bail only considering the medical ground of the co-accused, who was suffering from serious illness as well as the tuberculosis.

Considering the above aspects of the case, I find it not a fit case to allow the accused/petitioner to go on bail only considering the period of incarceration and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant