

GAHC010248432023



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

Case No. : Bail Appln./3989/2023

NAYEB ALI
S/O- MAMUD ALI R/O VILLAGE- GHILAGURI, P.S- BONGAIGAON DIST-
BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP.

2:TARUN KR. SAHA
THE SECRETARY OF 14 NO. KAKRAGAON GAON PANCHAYAT
VILL AND P.O KAKRAGAON P.S BONGAIGAON
DIST - BONGAIGAON
ASSAM PIN - 78337

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 15.11.2023

Heard Mr. M.I. Hussain, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

This is an application made under **Section 439 Cr.P.C.**, seeking bail by

the accused-petitioner, namely, **Nayeb Ali**, in connection with **Bongaigaon P.S. Case No. 421/2023**, registered under **Section 6/17 of POCSO Act r/w Section 9/10/11 of Prohibition of Child Marriage Act, 2006 r/w Section 75 of J.J. Act, 2015**.

It has been submitted by the learned counsel for the accused-petitioner that the marriage between the petitioner and victim was held about $\frac{3}{4}$ years back and at that time, the victim was minor. Since then, they lived together as husband and wife and out of their wedlock, one child was born. It is also submitted that as per Section 3 of Prohibition of Child Marriage Act, 2006, the child marriage is not a void marriage, it is just a voidable marriage. There is no allegation against the petitioner that he has committed any offence under the purview of POCSO Act. It is further submitted that the accused-petitioner has been detained in custody since 03.10.2023. Considering the nature of offence as well as length of detention, petitioner may be enlarged on bail.

In response, Mr. Baruah, learned Additional Public Prosecutor for the State has opposed in granting bail to the accused/petitioner. It is also submitted that the investigation is still going on so that the prayer of the accused/petitioner may be considered after perusal of the case diary.

I have considered the submissions made by the learned counsel for the parties. I have also perused the documents available on record.

It appears that the petitioner is the husband of the victim and there is no allegation against the petitioner that he has committed any sexual assault towards the victim which comes under the provision of POCSO Act. It also appears that one Secretary of Kakragaon Gaon Panchayat lodged the FIR alleging that the petitioner forcefully married the victim girl.

Considering the facts as stated above as well as the length of detention of

the accused-petitioner in custody, this Court is of the view that further custodial interrogation of the accused-petitioner is not necessary in the interest of investigation of the case.

Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **Bongaigaon P.S. Case No. 421/2023**, registered under **Section 6/17 of POCSO Act r/w Section 9/10/11 of Prohibition of Child Marriage Act, 2006 r/w Section 75 of J.J. Act, 2015**, on furnishing bail bond of **Rs.30,000/-** with one suitable surety of the like amount to the satisfaction of learned Special Judge(POCSO), Bongaigaon.

The direction for bail is further subject to the conditions that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of learned Special Judge(POCSO), Bongaigaon, without prior written permission from him/her;

(b) shall not hamper with the investigation, or tamper with the evidence of the case;

(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 from disclosing such facts to the Court or to any police officer.

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

JUDGE

Comparing Assistant