

GAHC010248732022



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

Case No. : Bail Appln./3355/2022

MD. SARFORAS ANSARY
S/O NURUL ISLAM
R/O VILL- KOCHGAON
P.S. RUPOHIHAT
DIST.NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T CHUTIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

17.01.2023.

Heard Mr. T. Chutia, learned counsel for the accused. Also heard Mr. B.B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, Sarforas Ansary, who is languishing in jail since 25.11.2022, in connection with the Bhangagarh P.S. Case No.339/2022, later on registered as Nagaon P.S. Case No.1410/2022, under Sections 376/313/325/34 of the IPC, read with added Sections 4/15 of the POCSO Act, for granting bail.

The aforementioned case has been registered on the basis of one F.I.R., lodged by one Azizul Haque on 16.11.2022, to the effect that one Sarforas Ansary had love affairs with his sister-in-law, Smti "X" (name withheld), aged 18 years, for last one year and he committed rape upon her on 05.11.2022, in a rented house and on that point of time, the age of his sister-in-law was 17 years 9 months. Thereafter, his sister in law came to know that she got pregnant and thereafter, Sarforas Ansary taken his sister-in-law to his rented house, situated at Desuwali Patty, Nagaon and there, the present accused along with Nurul Islam, Manuwara Begum and Benejir Ansary have administered tablet to her and got her pregnancy aborted. Thereafter, on 14.11.2022, again Sarforas Ansary has taken her to a Hotel at Basistha and committed physical relation with her, and thereafter, kept her in the house of her relative sister, namely, Arifa Begum and in the morning he again call her to his rented house and physically assaulted her, with the help of his elder sister namely, Benjir Ansary and threatened her that if she inform the police, then the video and photographs will be made viral in the media and left her alone in the room.

Mr. T. Chutia, learned counsel for the applicant submits that the accused is behind the bar for last 53 days and that at the relevant time of occurrence, she was major, as per the Aadhaar Card, her date of birth is 24.10.2002 and considering the length of detention, the learned counsel for the accused

contended to allow the petition.

On the other hand, Mr. B.B. Gogoi, learned Addl. P.P., Assam has produced the case diary before this Court and submits that the I.O. has collected sufficient incriminating materials in support of the allegation made in the FIR, against the accused and the offences are serious in nature and therefore, Mr. Gogoi has contended to dismiss the petition.

Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary produced before this Court with the assistance of Mr. Gogoi, learned Addl. P.P., Assam.

In view of the materials collected so far in the case diary, specially the statement of the victim girl recorded under Section 164 CrPC and the birth certificate of the victim collected by the I.O., during investigation, which shows that she was minor at the time of offence, and also the medical report of the victim girl, as well as the nature of accusation and punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused. And therefore, the same stands dismissed, at this stage.

The case diary be returned.

JUDGE

Comparing Assistant