

GAHC010250302023



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

Case No. : Bail Appln./4049/2023

TAMSER ALI
S/O- LATE BILAYAT ALI, RESIDENT OF VILL. NO.2 GARUGAON, P.S. AND
DIST.- BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ASHOK KR. BASUMATARY
S/O- SUBASH BASUMATARY
G.P. SECRETARY
HAPACHARA G.P.
P.S. MANIKPUR
DIST. BONGAIGAON
ASSAM
PIN- 78339

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

09.11.2023

Heard Mr. M. Khan, learned counsel for the accused-petitioner. Also heard

Ms. S.H. Borah, 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, **Tamser Ali**, in connection with **Bongaigaon P.S. Case No. 416/2023**, registered under Section **6/17** of POCSO Act read with Section **9/10/11** of the Prohibition of Child Marriage Act, 2006 and 75 of Juvenile Justices (Care and Protection) Act.

It has been submitted by the learned counsel for the petitioner that the victim girl was a major when the marriage took place between the victim and the petitioner and there is no allegation made by the victim or her family members against the petitioner regarding the alleged offence made in the FIR. It is also submitted by the learned counsel for the petitioner that the FIR was lodged by the GP Secretary of Hapachara GP, who has no relation with any family members of the victim. The petitioner was arrested on 03.10.2023 and since then he has been detained in jail custody for the last 38 days. Under the facts and circumstances, the accused may be enlarged on bail.

On the other hand, learned Additional Public Prosecutor submits that as it is a POCSO matter, notice be issued to the informant (respondent no.2) and the presence of the respondent no.2 is required at the time of hearing of the case.

I have heard the learned counsel for the parties.

The documents submitted by the learned counsel for the petitioner reveals that the Date of Birth of the victim was 05.02.2003, the FIR was lodged in the year 03.10.2023 and the marriage took place on 24.06.2022. As per the documents submitted by the petitioner clearly transpires that the victim was a major girl when the alleged marriage was solemnized between the petitioner and the victim.

In view of the above, bail is granted to the petitioner.

Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **Bongaigaon P.S. Case No. 416/2023**, registered under Section **6/17** of POCSO Act read with Section **9/10/11** of the Prohibition of Child Marriage Act, 2006 and 75 of Juvenile Justices (Care and Protection) Act, on furnishing bail bond of **Rs.30,000/-** with one suitable surety of the like amount, to the satisfaction of learned Special Judge, 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, 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.

(d) shall appear before the Investigating Police Officer once in a week for six weeks after his release on bail as and when called upon by the Investigating Police Officer till the investigation of the case is completed.

In case of violation of any of the above conditions by the petitioner, the learned Public Prosecutor is at liberty to move before this Court for cancellation of bail.

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

JUDGE

Comparing Assistant