

GAHC010255302022



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

Case No. : Bail Appln./3455/2022

MONTU PHUKAN
S/O- KULA PHUKAN,
R/O- DEMOW , MASOI,
P.S- DEMOW,
DIST- SIVASAGAR, ASSAM, PIN-785662

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR R ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

02.01.2023

Heard Mr. R. Islam, learned counsel for the accused and Mr. B.B. Gogoi, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973,

is preferred by accused, namely, Montu Phukan, who has been languishing in jail hazot in connection with the Sivsagar P.S. Case No. 394/2022, under Section 366 of the IPC, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by one Sri Munin Bora, on 20.10.2022, to the effect that his daughter Smti X [name withheld] aged 15 years is missing since 3 pm of 18.10.2022, and later on, he came to know that his daughter has been kidnapped by one Montu Phukan of Dimow Masoi, Sivsagar.

4. Mr. Islam, learned counsel for the accused submits that the accused was arrested on 25.11.2022, and since then he is behind the bar for last 40 days and that there was love affairs between the accused and the victim and that the victim is a major girl and as such, no offence under section 4 of the POCSO Act and 366 of the IPC is attracted here in this, and therefore, it is contended to allow this petition.

5. On the other hand Mr. Gogoi, learned Addl. P.P. by producing the case diary, submits that as per the birth certificate collected by the IO, the age of the victim girl is 15 years and though she stated in her statement under section 164 of the Cr.P.C. that she got married with the accused and that there was some relation between her and the accused, yet, at the relevant time she was 15 years old, and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Gogoi.

7. It appears from the case diary that during the course of the investigation the IO has collected the birth certificate of the victim. As per the birth certificate, issued by the Department of Health Services Sivsagar, her date of birth is 09.12.2007, and as such, at the time of occurrence she was a 'child' as defined in section 2[d] of the POCSO Act.

8. Further it appears from her statement recorded under section 164 of the Cr.P.C. that her age is 15 years and she has implicated the accused with the offence alleged under section 4 of the POCSO Act.

9. In view of the materials collected so far in the case diary as well as the age of the victim, this court is of the view that this is not a fit case where the privilege of bail can be extended to the accused.

10. Accordingly the petition stands dismissed.

11. The case diary be returned.

JUDGE

Comparing Assistant