

GAHC010255372022



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

Case No. : Bail Appln./3449/2022

EAS SALAM
S/O NURUDDIN SHEIKH
R/O VILL- KAIMARI, P.O. GOUR
NAGAO, P.S. LAKHIMPUR, DIST. GOALPARA, ASSAM, PIN-783129

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-01-2023

Heard Mr. M.A. Sheikh, learned counsel for the accused-petitioner and Mr. B. Sharma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure,

1973, the accused-petitioner viz. Eas Salam has prayed for his release on bail in connection with Lakhipur Police Station Case no. 419/2022, registered for the offences under Sections 366/376/34, Indian Penal Code [IPC].

3. The accused-petitioner was arrested and produced before the Court of learned Additional Chief Judicial Magistrate, Goalpara on 07.11.2022 and on being so produced, he was remanded to custody.

4. In the First Information Report [FIR], lodged on 06.11.2022, the informant had *inter alia* alleged that his daughter, aged about 18 years and a student of Class X, was threatened of murder about 7 months earlier by the accused-petitioner along with his wife and in that way, he tried to establish illicit relationship with her. At around 02-45 a.m. on 30.10.2022, the accused-petitioner in the company of some unknown miscreants had forcibly kidnapped the daughter of the informant by gagging her mouth when she came out of the house to attend the call of nature. The informant had further alleged that the accused-petitioner had thereafter, committed rape upon her forcefully and made her to subscribe her signature in a marriage agreement. Later on, the minor daughter of the informant was rescued. The informant had further alleged that the lodging of the FIR was delayed because of poor health condition of his daughter.

5. Mr. Sheikh, learned counsel for the accused-petitioner has submitted that under Section 439, CrPC, the Court has jurisdiction to consider the application for bail after the charge sheet is submitted. The accused-petitioner has completed 72 days in custody since his arrest on 07.11.2022 and as the charge sheet has been submitted, there is no question of hampering or tampering with the evidence of record. As the petitioner is a permanent resident

of the locality mentioned in the application, there is no question of his absconding. As such, this Court may consider the case of the accused-petitioner for bail.

6. From the case papers, it is noticed that the date of birth of the alleged victim is 04.09.2004. As per the FIR, the alleged act of kidnapping had occurred on 30.10.2022. Thus, the victim girl was just above 18 years of age on the date of alleged incident of kidnapping.

7. The learned Additional Public Prosecutor has submitted that since after completion of investigation in connection with Lakhipur Police Station Case no. 419/2022, the Investigating Officer [I.O.] of the case has submitted a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 272/2022 dated 31.12.2022 finding a *prima facie* case for commission of the offences under Sections 366/376, IPC, the case diary is not available with him.

8. From the order dated 29.11.2022 passed by the Court of learned Additional Sessions Judge, Goalpara in connection with Misc. Criminal Case no. 534/2022, it has emerged that the statement of the victim was recorded under Section 164, CrPC and on consideration of the materials in the case diary and upon perusal of the said statement of the victim recorded under Section 164, CrPC, the bail prayer of the accused-petitioner was rejected. The allegations in the FIR gets strengthened with the submission of the charge sheet, filed after completion of investigation. It is well settled that the matters to be considered in an application for bail are [i] whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; [ii] nature and gravity of the charge; [iii] severity of the punishment in the event of conviction; [iv] danger of the accused absconding or fleeing, if released on bail; [v]

character, behaviour, means, position and standing of the accused; [vi] likelihood of the offence being repeated; [vii] reasonable apprehension of the witnesses being tampered with; and [viii] danger, of course, of justice being thwarted by grant of bail. It is no doubt true that while considering an application for bail the aspect of personal liberty of the accused is also to be considered. Any consideration for a prayer for bail under Section 439, CrPC after submission of the charge sheet is to be made on the basis of the materials available in the case record and on merits. For consideration of such a bail application, the Court is required to go through the materials which invariably include the materials indicated in Section 207, CrPC. As such materials are not available before the Court presently for consideration, this Court is of the considered view that the accused-petitioner should approach the learned jurisdictional trial court.

9. The instant application is therefore, closed, reserving the liberty to the accused-petitioner to approach the learned jurisdictional trial court seeking regular bail. In the event the accused-petitioner approaches the learned jurisdictional trial court by filing any application seeking regular bail, the learned jurisdictional trial court shall consider such application with expedition on its own merits and in accordance with law.

JUDGE

Comparing Assistant