

GAHC010261612023



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

Case No. : Bail Appln./4260/2023

FUKAN CH BORMAHELA @ PHUKAN CH BORMAHELAH
S/O LATE UMA KANTA BORMAHELA
R/O VILL- JALAKIABORI
WARD NO. 3,
P.S. LAHARIGHAT
DIST. MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:NAJIMA BEGUM
W/O ABDUL RAHIM
R/O VILL- HALADHIBORI
WARD NO. 8

P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM

PIN-78212

Advocate for the Petitioner : MR. U K BARMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI
O R D E R

22.12.2023

1. Heard Mr. B.K. Mahajan, learned counsel assisted by Mr. N. Mahajan, learned counsel appearing on behalf of the petitioner. Also heard Mr. K.M. Bora, learned counsel appearing for the respondent No. 2(informant) and Mr. R.J. Baruah, learned Addl. P.P. for the State respondent.
2. This is an application filed under Section 439 Cr.P.C. praying for granting regular bail to the petitioner, **Fukan Ch. Bormahela @ Phukan Ch. Bormahelah** in connection with **Laharighat P.S. Case No. 274/2023**, registered under Sections **8 of the Protection of Children from Sexual Offences Act (POCSO) added Section 4/18 of the Protection of Children from Sexual Offences Act (POCSO)**, who was arrested on 27.10.2023.
3. Vide order dated 23/11/2023 case diary was called. Accordingly, case diary is received.
4. The case of the prosecution is that respondent no. 2 (mother of the victim) has filed an ejahar before the Officer-in-Charge, Laharighat Police Station alleging inter-alia that on 27.10.2023 at around 9.00 A.M. in the morning, while her son was going to Bobori Chariali Market, the accused person called her son in front of the shop of Abdul Motleb and talked with him by making him sit on a bench and showing greed of money, forcefully took him to the jungle near the

market and in the jungle, firstly, the accused put down his pant and later put down the half pant of her son and made him stand and tried to rape her son by forcefully making his penis touch the back side of the private part of her son. Accordingly, a case has been registered.

5. Mr. M. Mahajan, learned counsel for the petitioner submits that he is an innocent person and not committed any such offence as alleged and that the allegations leveled against him are totally false and fabricated. He further submits that the petitioner is a retired headmaster of Jalakiabari M.E. School, Morigaon and that on the day of the alleged incident, the petitioner went for open defecation in the nearby jungle and the son of the informant/respondent no. 2 was pelting stone on him and later the petitioner caught hold of him in the market and rebuked him and told him not to do such act in future and only being aggrieved by that, the instant false FIR has been lodged against the petitioner.

6. Mr. K. M. Bora, learned counsel appearing for the respondent no. 2 has filed an affidavit opposing the prayer of the bail of the petitioner. Mr. R.J. Baruah, learned Addl. P.P. opposes the prayer of the bail and submits that there are materials available on the record and the charge is yet to be framed.

7. I have considered the submissions made at the Bar and perused the case records produced from the Court of Additional Sessions Judge-cum-Special Judge, POCSO, Morigaon and also the affidavit filed by the respondent No.2.

8. I have perused the statement of the victim under Section 164 Cr.P.C. It appears from the said statement that the victim boy, who is 15 years of age has not supported the allegations leveled by his mother in the FIR. It further appears that after completion of investigation, the I.O. has submitted charge-sheet vide a Charge-sheet No.239/2023 dated 26.11.2023 against the present

accused under Sections 4/18 of the POCSO Act.

9. Considering all aspects of the matter, the petitioner namely **Fukan Ch. Bormahela @ Phukan Ch. Bormahelah** is allowed to go on bail in connection with the above noted case on furnishing bail bond of **Rs.30,000/- (Rupees Thirty Thousand) only** with one surety of like amount to the satisfaction of the learned **Special Judge (POCSO), Morigaon**.

10. The bail granted to the petitioner shall be subject to the following conditions-

- i) The petitioner shall regularly appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed off;
- ii) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case so as to dissuade such person from disclosing such facts to the Court or to any Police Officer;
- iii) The petitioner shall not leave the territorial jurisdiction of the trial Court without prior permission till completion of the trial; and
- iv) The petitioner shall refrain from such activities with which he is alleged, failing which, his bail order shall stand cancelled.

11. With the above observation, this bail application stands allowed.

12. This disposes of the bail application.

JUDGE

Comparing Assistant