

GAHC010262062022



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

Case No. : Bail Appln./3599/2022

MD. BAKKAR ALI @ ALLAUDDIN
S/O- MD. LT. AZAD ALI, R/O- VILL- PUB KATARATI P.S. SOOTEA, DIST.-
BISWANATH, ASSAM, PIN-

VERSUS

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

2:MD. ABDUL KHALEK
S/O- LT. RAJAB ALI
R/O- 4 NO. BHOJMARI
P.O. AND P.S. SOOTEA
DIST.- BISWANATH (ASSAM)
PIN- 78417

Advocate for the Petitioner : MR. N ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

05.01.2023

Heard Mr. N Islam, learned counsel for the accused and also heard Mr. BB Gogoi, learned Addl. PP, State of Assam.

2. This application under Section 439 Cr.P.C. is preferred by accused, namely, Md. Bakkar Ali @ Allauddin, who has been languishing in jail hajot since 13.10.2022 in connection with Behali PS Case No. 72/2022, under Section 4 of the POCSO Act.

3. The aforementioned case has been registered on the basis of one FIR lodged by Md. Abdul Khalek on 12.10.2022, to the effect that on 03.10.2022 at about 2.00 PM, his daughter Smti. X (name withheld), left home for roaming with Musstt. Ashma Begum, without informing the family member, and on 07.10.2022 at about 5.00 o clock his daughter called Jallal Ali and told him that she is safe at Md. Majid Ali's house and would return home on the next date. Then on 08.10.2022, at about 9.00 PM. Ashma Begum informed his son in law that his daughter is serious and asked him to come to Tezpur Medical College and Hospital immediately. Then along with his son in law, he went to the Hospital at about 12.00 AM and came to know from his daughter that Bakkar Ali committed rape upon her daughter and there is bleeding from her private parts.

4. Mr. Islam, learned counsel for the accused submits that the accused is behind the bar for 86 days and that he is suffering from ailments and his condition is deteriorating day by day and therefore, this second bail application is filed and he is ready to co-operate with the investigating agency, 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 though the investigation is about to complete, yet, the offence is serious and there is no medical document to support the contention of the ailment of the accused and as such, this second bail application is not maintainable, 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, learned Addl. P.P. Also perused the order dated 08.12.2022, passed by this court in Bail Application No. 3055/2022.

7. It is to be mentioned here that vide aforementioned order, this court was pleased to dismiss the earlier bail petition for the accused after perusing the case diary. This second bail application is preferred on the ground that the accused is suffering from ailments and his condition is deteriorating day by day. But, no medical document is enclosed with the petition to support such a contention. To a pointed the learned counsel for the accused submitted that there is no medical document. And as such, there is no justifiable ground for maintaining this second bail application.

8. Admittedly, the offences are serious in nature and as the accused failed to make out a case for reconsideration of the decision dated 08.12.2022, for granting bail to him, and therefore, this court is inclined to dismiss the petition.

9. Accordingly the petition stands dismissed.

10. The case diary be returned.

JUDGE

Comparing Assistant