

GAHC010265652022



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

Case No. : Bail Appln./3627/2022

BITU BISWAS
S/O- LATE GANESH BISWAS,
R/O VILLAGE KALONGPAR, NONKEY BIJNI,
P.O AND P.S- SONAPUR,
DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. J C GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 25.01.2023

Heard Mr. B. Islam, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned APP appearing for the State.

2. The petitioner, namely, Bitu Biswas, who was arrested on 20.09.2022, is seeking regular bail under section 439 Cr.P.C. in connection with Sonapur P.S. Case No. 182/2022, under section 448/376(3)/511 IPC read with section 8 and 18 of the POCSO Act, which has been tried as Sessions (Spl.) Case No. 77/2022 before the Court of learned Additional Sessions Judge-cum-Special Judge (POCSO), Kamrup (Metropolitan), Guwahati.

3. In this case, charge-sheet has been filed and trial has already begun.

4. The learned APP has referred to the materials available against the petitioner in the scanned copy of the case records received from the learned trial Court and has opposed the prayer for bail.

5. On perusal of the case records, it appears that there was an attempt by the petitioner to outrage the modesty of the minor victim girl and he had allegedly touched her breasts. But there was no material on records to indicate that there was any penetrative sexual assault on the victim. The petitioner is charged of committing offence under section 448/376(3)/511 IPC read with section 8 and 18 of the POCSO Act.

6. Nonetheless, in light of the nature of assault stated by the victim in her statement recorded under section 164 Cr.P.C., the Court is of the considered opinion that further custodial interrogation of the petitioner may not be necessary.

7. Hence, on considering the length of detention, the Court is inclined to grant bail to the petitioner, namely, Bitu Biswas in connection with the aforesaid case on furnishing bail bond of Rs.1,00,000/- (Rupees one lakh only)

with two suitable and solvent surety of like amount to the satisfaction of the learned Additional Sessions Judge-cum-Special Judge (POCSO), Kamrup (Metropolitan), Guwahati. Out of the two sureties, one should offer his immovable property having sufficient value to cover the bail amount as surety.

8. Bail is granted on the following conditions:

- I. The petitioner 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 tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
- II. The petitioner shall not obstruct the smooth progress of the trial.
- III. The petitioner shall not misuse his liberty in any manner.
- IV. The petitioner shall appear before the Court of learned Additional Sessions Judge-cum-Special Judge (POCSO), Kamrup (Metropolitan), Guwahati on each and every date. If the petitioner is unable to appear before the said learned Court on any particular date, he would obtain a previous order from the learned Additional Sessions Judge-cum-Special Judge (POCSO), Kamrup (Metropolitan), Guwahati to be absent on the date fixed. However, the petitioner shall ensure that he is duly represented by his learned counsel on such date.
- V. The petitioner would submit an undertaking before the trial Court that he would not dispute his identity or the identity of the witnesses when the witnesses are explained during his absence in trial while he is represented by his learned counsel.

- VI. In the event, the petitioner fail to appear before the trial Court in disregard to these conditions, it would be open for the learned trial Court to pass appropriate orders for cancellation of bail under section 439(2) Cr.P.C. and to issue NBWA to secure his presence.
- VII. The petitioner shall not leave the jurisdictional police station without prior intimation to the learned trial Court.

9. This application stands disposed of.

JUDGE

Comparing Assistant