

GAHC010266072022



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

Case No. : Bail Appln./3607/2022

HOSEN ALI @ HUSSAIN ALI AND ANR
S/O MOJER ALI
R/O VILL- BHARALKUNDI
PART-IX,P.S. JOGIGHOPA
DIST. BONGAIGAON, ASSAM

2: MOJER ALI
S/O MAKARAM ALI
R/O VILL- BHARALKUNDI
PART-IX
P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS B GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

19.01.2023.

Heard Ms. B. Gogoi, learned counsel for the accused. Also heard Mr. B.B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by two accused, namely, (1) Hosen Ali @ Hussain Ali and (2) Mojer Ali, who have been languishing in jail hazot since 28.11.2022, in connection with the Jogighopa P.S. Case No.199/2022, under Sections 448/376(3)/315/109/506/34 of the IPC, read with Section 4 of the POCSO Act, for granting bail.

The above noted Jogighopa P.S. Case No.199/2022 has been registered on the basis of an FIR, lodged by one Marjina Khatun, on 27.11.2022, to the effect that on 01.09.2022, she along with her husband went to Guwahati to attend some works, leaving their minor daughter Smti 'X' (name withheld), with her old aged mother in the house and taking advantage of absence of her mother in the house, accused Hosen Ali entered into her house and committed rape upon her and one Mohibul Hoque guarded them and thereafter, accused Hosen Ali warned her daughter not to disclose the matter to anybody else, promising to marry her in future and threatened to kill her, if she disclose the same to others. As a result of such sexual intercourse, her daughter got pregnant and one Majer Ali (present accused No.2), the father of the accused No.1, administered some medicines to abort her foetus.

Ms. B. Gogoi, learned counsel for the accused persons submits that the accused persons are innocent and no-way involved with the offence alleged in the FIR and that the accused and the informant are neighbours and they are ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

On the other hand, Mr. B.B. Gogoi, learned Addl. P.P., Assam has produced the case diary before this Court and submits that the I.O. has collected sufficient materials against the accused No.1, Hosen Ali @ Hussain Ali and therefore, he has objection in releasing him on bail. However, Mr. Gogoi submits that the materials so far collected in the case diary is inadequate to show complicity of accused No.2, Mojer Ali, with the offence alleged in the FIR.

Having heard the submissions of learned Advocates of both sides, 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., Assam.

It appears that the I.O. has collected sufficient incriminating materials in support of the allegation made in the FIR, against the accused No.1, Hosen Ali @ Hussain Ali. It also appears that at the relevant point of time, the age of the victim was 14 years.

In view of above, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused No.1, Hosen Ali @ Hussain Ali and therefore, the same stands dismissed.

However, I view of the materials collected so far in the case diary as well as the length of detention, further custodial detention of the accused No.2, Mojer Ali, seems to be not necessary here in this case. And accordingly, it is provided that on furnishing a bond of Rs.25,000/- (Rupees twenty five thousand) only, with one surety of like amount to the satisfaction of the learned Special Judge, POCSO Act at Bongaigaon, he shall be enlarged on bail, in connection with the Jogighopa P.S. Case No.199/2022.

In terms of above, this bail application stands disposed of.

The case diary be returned.

JUDGE

Comparing Assistant