

GAHC020000522023



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

Case No. : Bail Appln./5/2023

MR. DAVID SWUNETHO
AGE 40 YEARS,
S/O LT.KIKHU, P/ADD.THEMEZIE COLONY, KOHIMA AND
PERMANENT R/O LAZAMI VILLAGE, PUGHOBOTO, ZUNHEBOTO,
NAGALAND

VERSUS

THE STATE OF NAGALAND
NAGALAND, KOHIMA

Advocate for the Petitioner : PAKINRICHAPBO

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 11-04-2023

Heard Mr. Pakinrichapbo, learned counsel for the petitioner and also heard Mr. V. Zhimomi, learned PP for the State of Nagaland.

2. This application under Section 439 of CrPC, 1973 has been filed by the petitioner in connection with GR Case No. 115/2022, Kohima Women PS case No. 08/2022 under Section 354A(1)/ 376(3)

IPC read with Section 4/6 of POCSO Act,2012.

3. The learned counsel for the petitioner submits that the petitioner was arrested on 17.09.2022 in connection with Kohima Women PS case No. 08/2022 on the basis of the FIR dated 16.09.2022. The petitioner approached the learned Principal District & Session Judge, Kohima under Section 439 read with 437(1) (i) (ii) CrPC for release on bail which was rejected vide order dated 18.10.2022 on the ground that the investigation is at the initial stage and the offences charged with are heinous in nature.

4. The learned counsel for the petitioner submits that charge sheet has already been filed by the Police on 31.10.2022 and the trial is at the stage of evidence.

5. The learned counsel for the petitioner while drawing attention of this Court to the additional affidavit filed on 20.03.2023 wherein the petitioner has annexed medical report documents and also a compromise agreement entered on 18.02.2022 prays that the accused may be released on bail on account of his serious ailments.

6. The learned counsel for the petitioner further submits that no prima facie case is made out against the petitioner which is substantiated by the medical report of the victim. Moreover, no custodial interrogation is required and detaining the accused would hamper the defense of the accused. Therefore, the accused may be enlarged on bail.

7. Mr. V. Zhimomi, learned PP referring to the medical reports as well as the medical documents pertaining to the ailments of the

petitioner submits that the accused/petitioner appears to be suffering from serious ailments and since the case is at the stage of evidence, he has no objection if this Court enlarge the petitioner on bail, pending trial of the case.

8. I have considered the submissions of the learned counsels for the parties and also scrutinized the materials available on record.

9. On close scrutiny of the medical report of the victim, the report (Annexure-3) does not depict of any recent intercourse having been had by the victim, in other words, medical report is in the negative which sways in favour of the petitioner. The medical documents pertaining to the ailments of the petitioner indicates serious ailments and considering that the trial is in the evidence stage, this Court is of the considered view that the petitioner is entitled for being granted bail.

10. Accordingly, this bail application is allowed and the petitioner is ordered to be enlarged on bail in connection with GR case No. 115 of 2022, Women PS case No. 08/2022 under Section 354A(1)/ 376(3) IPC read with Section 4/6 of POCSO Act on executing a personal bond of Rs. 20,000/- (Twenty thousand) only with one surety of like amount, subject to the following conditions:

- (i) The petitioner shall appear before the jurisdictional court on all the dates of hearing without fail.
- (ii) The petitioner shall not terrorise or tamper with the prosecution witness in any manner whatsoever.

(iii) The petitioner shall not leave the jurisdiction of the Court without express permission.

In the event of any of the conditions herein above being violated, the prosecution would be at liberty to seek for cancellation of the bail.

Sd/-
JUDGE

Comparing Assistant