

GAHC040016062023



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

Case No. : BA/122/2023

Ganga Sidasow
Son of Sri Gejang Sidasow, Resident of Yayung village, P.O and P.S Yayung, West
Kameng District, Arunachal Pradesh. Phone No. 8731938757

VERSUS

The State of AP and Anr.
Represented by the Public Prosecutor.

2:Miss X
Age: 0
Occupation

Advocate for the Petitioner : G Taloh

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 24.01.2024

Heard Mr. G. Taloh, learned counsel for the petitioner. Also heard Ms. T. Jini,
learned Additional Public Prosecutor for the State respondent.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of bail to the accused who has been arrested in connection with Rupa P.S. Case No. 17/2023, under Sections 366/376/506 of the Indian Penal Code *read with* Section 4 of the POCSO Act, 2012.

Scanned copy of the LCR along with updated Order Sheet have been received and I have perused the same.

It is submitted by Mr. G. Taloh, learned counsel for the petitioner, that both the accused and the victim were in love with each other and when the victim was 14 years of age and the present accused was of 17 years of age, they got married out of their love affairs and stayed as husband and wife. Thereafter, with an allegation of extra-marital affair, the victim lodged an F.I.R. against the accused. He further submitted that presently the victim is 18 years of age and from the Aadhar Card and the Bank Statement, it is very much evident that the victim girl is 18 years at present. But the Birth Certificate, which was obtained by the victim in the year 2017, shows her year of birth as 2006 but, in the other documents, her date of birth is shown as 2002. The learned counsel further submitted that both the victim and her mother in their evidence have also accepted the fact that they got married out of their love affairs and were staying as husband and wife and some rituals were also followed at the time of their marriage agreement. In this context, one additional affidavit sworn by the victim is also filed along with the present bail petition, wherein the victim has stated that she has no objection if the accused is released on bail at this

stage and also stated that due to frustration and misunderstanding, she lodged the F.I.R. against the present accused. The learned counsel for the petitioner further submitted that the prosecution witnesses are being examined and the statement of the accused is also recorded under Section 313 Cr.P.C. and presently, the case is at the stage of argument. The victim is also willing to reside with the accused at present and hence, she sworn an affidavit stating that she has no objection if the accused is released on bail at this stage.

In this context, the learned Additional Public Prosecutor, Ms. T. Jini, has submitted that in the evidence of the victim, she stated her age to be 17 years as on 18.01.2024 and on the same date, she sworn an affidavit stating her age to be 21 years and therefore it can be presumed that there may be some threatening from the accused side to sworn the affidavit, wherein she stated her age to be 21 years. Further she submitted that even if it is considered that there was a marriage between the accused and the victim and in that case also, it will be considered as illegal as the victim is still a minor. Thus, the consent of the victim also cannot be considered as a consent and it attracts Section 6 of the POCSO Act and accordingly, she raised objection in granting bail to the accused at this stage.

After considering the submissions made by the learned counsels for both sides, I have perused the scanned copy of the case record and the statement of both the victim and her mother and other witnesses.

It is seen that all the witnesses, i.e. 12 numbers of witnesses, are already been examined by the learned Court below and the Order Sheet also speaks that the statement of the accused under Section 313 Cr.P.C. is also recorded by the learned Court below. From the evidence of the victim as well as her mother, it also reveals that both the victim and accused stayed together as husband and wife for couple of years. It is a fact that the marriage between the accused and the victim cannot not be considered as a legal marriage as at the time of her marriage, she was a minor. However, considering the fact that all the P.Ws. have been examined and the case is at the stage of argument and also considering the fact that the victim has also sworn an affidavit stating that she has no objection if the accused is released on bail, I find that further custodial detention of the accused is not necessary and therefore I find it a fit case to extend the privilege of bail to the accused.

Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, POSCSO, Bomdila, the accused, namely, Shri Anand Sidasow, be enlarged on bail, subject to the following conditions:

- (i) that the accused 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 to any police officer; and

- (ii) that the petitioner shall not leave the jurisdiction of the learned Special Judge, Bomdila, without prior permission.

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

JUDGE

Comparing Assistant