

GAHC040016932023



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

Case No. : BA/130/2023

Kamdev Chaudhary
S/o Shri Anand Chaudhary, Presently residing at Sangram, PO/PS Sangram, Kurung
Kumey District, Arunachal pradesh.

VERSUS

The State of AP and Anr.
represented public prosecutor 2:XYZ
Age: 0
Occupation

Advocate for the Petitioner : Tao Tarin

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 10.01.2024

Heard Mr. J. Jini, learned counsel for the applicant. Also heard Ms. L. Hage, learned Addl. Public Prosecutor for the State and Mr. B. Tatung, learned counsel appearing on behalf of the respondent no. 2.

This is an application, under Section 439 of the Code of Criminal

Procedure, 1973, filed by the father of the accused praying for release of the accused, namely, Shri Chandan Kumar Chaudhury on bail in connection with Sangram P.S. Case No. 04/2023, under Sections 363/376 of the Indian Penal Code *read with* Section 4 of the POCSO Act. The present application has been filed directly before this Court in view of the presiding officer, Special Court (POCSO) at Ziro being on leave.

Initially an First Information Report (FIR) dated 21.10.2023 was lodged by one Smti Risso Yajuk, stated to be the elder sister of the victim, which is basically a missing report. The FIR was registered being Sangram P.S. Case No. 04/2023, under Section 363 of the Indian Penal Code, 1860 alleging that the victim was being induced and lured to elope by an unknown person. The accused Shri Chandan Kumar Chaudhury was arrested on the basis of the said FIR.

On 24.10.2023, while forwarding the accused person, offences under Sections 363/376 of the Indian Penal Code *read with* Section 4 of the POCSO Act were added.

Mr. J. Jini, learned counsel for the applicant submits that the victim had left the house of her elder sister voluntarily and went to North-Lakhimpur to meet the accused, whom she accepts as her husband and they stayed together. The victim and the accused were in serious relationship since the last two years and in fact they were in live-in relationship and they are ready to marry on attaining majority of the victim. It is the contention of the learned counsel for the applicant that the victim is now 8 months pregnant and they are ready for marriage. Mr. J. Jini, learned counsel further submits that both the families have entered into mutual agreement and agreed that

the families are having no objection regarding the marriage of victim and the accused in near future. Since the victim is pregnant out of their love relationship, the accused would be the caregiver to the victim. Therefore, prays for release of the accused on bail.

On the other hand, Ms. L. Hage, learned Addl. P.P., submits that since the victim is a minor, consent or agreement/compromise in between the parties is immaterial. She further submits that Charge-sheet has already been filed by the police on 07.01.2024, which clearly reveals that the Birth Certificate of the victim is 20.06.2007, which shows that the victim is a minor. Ms. Hage, learned Addl. P.P., also submits that the accused is a residence of the State of Bihar, and there is a chance of evading the trial, for which, the accused cannot be granted bail at this stage.

Mr. B. Tatung, learned counsel for the respondent no. 2 submits that in view of the settlement between the families of the victim and the accused and the victim is ready to marry the accused and she being 8 months pregnant, she needs to be taken care by the accused at this stage, he has no objection if the accused is granted bail.

Perused the Case Diary.

Considering that there is love affair between the victim and the accused and their marriage is likely to take place in future and being agreed by the families of victim and the accused coupled with the fact that out of their love affair the victim is reportedly 8 months pregnant and the accused had met with an accident, for which, he requires further medical treatment, this Court is inclined to grant bail to the accused person.

Accordingly, the accused, namely, Shri Chandan Kumar Chaudhury shall be released on bail on furnishing a bail bond of Rs. 20,000/- (Twenty thousand) with two sureties of like amount to the satisfaction of the learned Chief Judicial Magistrate, Ziro on the following conditions:-

- (1) The accused shall appear before the Court as and when required;
- (2) The accused shall not leave the jurisdiction of Sangram Police Station as well as the jurisdiction of Special Judge, POCSO at Ziro, without written permission from the police or Court.

The bail application stands disposed of in terms above.

JUDGE

Comparing Assistant