

GAHC040017032023



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

Case No. : BA/132/2023

Miss Deepika Das
Permanent Resident of Village Lalarchak, PO/PS Karimganag, District Chachar and
Presently residing at Dokum Colony, Lower Police Colony, Near Naharlagun Police
Station, PO/PS Naharlagun, District papum Pare, Arunachal pradesh, Pin 791110

VERSUS

THE STATE OF AP
represented by Public Prosecutor

Advocate for the Petitioner : Tadak Sora

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 22.01.2024

Heard Mr. D. Sora, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent and Mr. T. Gyatso, learned counsel appearing on behalf of respondent No. 2/victim.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, preferred by petitioner praying for grant of bail to the accused, namely, Shri Dipankar Das, who has been arrested in connection with Itanagar Women P.S. Case No. 92/2023, under Section 376 of the Indian Penal Code *read with* Section 4 of the POCSO Act.

Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioner, Mr. Sora, that the accused is innocent and he is no way involved in the offence as alleged in the F.I.R. It is a fact that the accused and the mother of the victim had a good relationship being a neighbour, who was staying in a rented house near the house of the victim. Further it is submitted that without going by the merit of the case, it is a fact that the accused is behind the bar since more than 3 (three) months and by that time, the Charge-Sheet has already been filed and the statement of the victim was also recorded under Sections 161 & 164 Cr.P.C. and hence, further custodial interrogation of the accused is not at all necessary. Further it is submitted that it is a principle of the criminal law that the accused is presumed to be innocent till he is found guilty. Further, as the case has already been Charge-Sheeted, there is no chance of hampering or tampering of the evidence of the prosecution and hence, the accused may be released on bail. The accused is the only person to look after his entire family and in his absence, his entire family is suffering including his old ailing mother. Further, he will appear before the learned Court below on each and every date to be fixed by the Court and will abide by any terms and conditions imposed on

him if he is enlarged on bail.

In this context, Mr. Ete, learned Additional Public Prosecutor, has submitted that it is not at all a fit case to allow the accused to go on bail considering the nature of allegation brought against the accused. The learned Court below, while dealing with the bail petition, has discussed in detail as to how the accused was not only maintaining illicit relationship with the mother of the victim by showing some obscene video but also committed sexual assault on the minor victim and in such a situation, if the accused is released on bail, there is every probability of hampering the evidence of the minor. Further he submitted that the incarceration and necessity of custodial interrogation only cannot be the ground for entertaining the bail application and in that regard, he also placed reliance on a decision of Hon'ble Apex Court reported in **2022 SCC OnLine SC 1529 (Sumitha Pradeep Vs. Arun Kumar C. K. & Anr.)**, wherein it has been held that even if the custodial interrogation is not required or necessitated, by itself, cannot be the ground to grant anticipatory bail.

The learned Additional Public Prosecutor has further submitted that unlike other criminal offences, in the cases under the POCSO Act, the principle that the accused is presumed to be innocent unless proven guilty cannot be applied for because the rigor of Section 29 of the POCSO Act will follow and if any person is found to have committed an offence under Sections 3, 5, 7 & 9 of the POCSO Act, the presumption under Section 29 will be followed.

The learned counsel appearing on behalf of the victim, Mr. T. Gyatso, also

submitted that the accused has committed a heinous offence and he was having sexual relationship with the minor victim showing some obscene video of her mother and if the accused is allowed to go on bail, without recording the statement of the victim or the other witnesses, there is every probability of hampering or tampering the evidences, specially the minor, and hence, he raised objection in granting bail.

Considering the submissions made by the learned counsels for the parties and also considering the materials in the case record and the statement made by the witnesses, I find force in the submission made by the learned Additional Public Prosecutor and the learned counsel appearing for the victim and the probability of hampering or tampering the evidences, specially of minor victim, cannot be denied at this stage, and accordingly, I am of the view that this is not a fit case where the privilege of bail can be extended to the accused/petitioner at this stage only considering the period of detention, as stated above, and accordingly, the same stands rejected.

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

Case Diary be returned.

JUDGE

Comparing Assistant