

GAHC010003652024



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

Case No. : Bail Appln./124/2024

BHABEN BHUYAN
S/O LATE INDESWAR BHUYAN
R/O VILL- KUBAIGORAH
P.O. AND P.S. BISWANATH CHARIALI
DIST. BISWANATH, ASSAM
PIN-784177

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:JYOTI BHUYAN
W/O SRI BHABEN BHUYAN
R/O VILL- KUBAIGORAH
P.O. AND P.S. BISWANATH CHARIALI
DIST. BISWANATH
ASSAM
PIN-78417

Advocate for the Petitioner : MR N N UPADHYAYA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 23.02.2024

Heard Mr. N.N. Upadhyaya, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by the accused, namely, Bhaben Bhuyan, who has been languishing in jail hazot in connection with Special (POCSO) Case No. 162/2023, under Section 354B of the IPC, read with Section 8 of the POCSO Act, arising out of Biswanath Chariali P.S. Case No. 107/2023.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Jyoti Bhuyan on 18.08.2023. The essence of allegation made in the FIR dated 18.08.2023, is that on 15.08.2023, at about 8:30 p.m. in the evening, the accused, who happens to be the second husband of the informant, subjected her own daughter to sexual harassment.

4. Upon the said FIR, the Officer-in-charge of Biswanath Chariali P.S. has registered a case, being Biswanath Chariali P.S. Case No. 107/2023, under Section 354B of the IPC, read with Section 8 of the POCSO Act and carried out investigation, which culminated in submission of charge-sheet against the present accused under Section 354B of the IPC, read with Section 8 of the POCSO Act. Upon the said charge-sheet, the learned Court below has taken cognizance of the offence under Section 354B of the IPC, read with Section 8 of the POCSO Act, vide order dated 07.11.2023, and thereafter, hearing both the parties, framed charge under Sections 8 and 12 of the POCSO Act. Thereafter, the learned Court below has examined as many as two witnesses i.e. the

informant and the victim and now the case is pending for further examination of the witnesses.

5. Mr. Upadhyaya, the learned counsel for the accused submits that the accused was arrested on 19.08.2023 and since then, he has been languishing in jail hazot for more than 180 days and that the allegation levelled against the accused is false and that the relation between the informant and the accused is strained, and since the two material witnesses have already been examined, there is no question of influencing them, and that the accused is ready to face trial and appear before the learned Court below on each and every date, and therefore, Mr. Upadhyaya has contended that the accused may be enlarged on bail.

6. On the other hand, Mr. R.J. Baruah, learned Addl. Public Prosecutor submits that in their evidence, the victim and the informant have implicated the accused with the offence charged and that there remains to be examined another six witnesses, and therefore, Mr. Baruah submits that this is not a fit case where the privilege of bail can be granted to the accused and accordingly, Mr. Baruah has contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both side, I have gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below and also the statement of the victim and the informant so examined by the learned Court below.

8. It is not in dispute that the accused was arrested on 19.08.2023, and since then, he has been languishing in jail hazot for more than 180 days. Further, it appears that after framing charge, the learned Court below has examined two material witnesses i.e. the victim and the informant of this case.

9. Having considered the evidence of the two material witnesses and without making any comment on the merits and demerits of their evidence and further considering the length of detention, this Court is inclined to allow the petition.

10. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Special Judge (POCSO), Biswanath Chariali, the accused be enlarged on bail.

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

JUDGE

Comparing Assistant