

GAHC010014072024



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

Case No. : Bail Appln./228/2024

KAUSHIK BARO
S/O SONA RAM BARO
R/O KALAIGAON (GERUA)
P.S. AND P.O. KALAIGAON -784525
DIST. UDALGURI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:SRI PRABHAT BORO
S/O LATE BHADRA KT. BORO
VILL- BONGAON
P.S. KALAIGAON
DIST. UDALGURI
ASSA

Advocate for the Petitioner : MS. S G BARUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02-02-2024

Heard Ms. S.G. Baruah, learned counsel for the petitioner as well as Mr.

K. Baishya, learned APP for the State.

2. This is a second bail application filed by the petitioner under section 439 Cr.P.C. for enlarging him on bail in connection with Kalaigaon PS case no.72/2022 corresponding to GR case no.489/2022 under section 376(3) IPC read with section 4/6 of the POCSO Act, which is being tried as Special (POCSO) case no.22/2022 by the Court of learned Special Judge, Udalguri.

3. The previous application for bail was rejected by order dated 17.02.2023 passed in BA 123/2023. At that point of time the petitioner had been in jail for 185 days. It is submitted that as on date, as the petitioner was arrested on 15.08.2022 he had suffered jail custody of 535 days. It is also submitted that in course of trial out of 8 witnesses only 6 witnesses had been examined.

4. The learned APP has referred to the scanned copy of the LCR which were obtained in connection with BA 123/2023 as well as the documents annexed to this bail application and it is submitted that there are sufficient incriminating materials to show that the petitioner had sexually assaulted a minor victim and the victim had also delivered one baby on 03.11.2022. Accordingly, it is submitted that the petitioner is not entitled to be released on bail.

5. On a consideration of the projection that the petitioner was arrested on 15.08.2022 and had suffered jail custody for 535 days as on date, notwithstanding that there are materials in the case record against the petitioner but he had spent 535 days in custody the Court is of the considered opinion that the petitioner is entitled to be released on bail. Accordingly, the

prayer for bail is allowed.

6. It is provided that in the event the petitioner furnishes a proof of his address as well as on furnishing a bail bond of Rs. 1 lakh with one surety of like amount to the satisfaction of the learned Special Judge (POCSO), Udalguri, he shall be released on bail on the following conditions:

I. That the petitioner shall appear before the Court in the present case as and when required.

II. That the petitioner 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 Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.

III. That the petitioner shall not obstruct the smooth progress of the trial.

IV. That the petitioner shall not misuse his liberty in any manner.

V. That the petitioner shall not jump over the bail.

VI. The petitioner shall appear before the learned trial Court on each and every date. It is also provided that in the event of default in appearing on a date for trial without any lawful excuse, it would be open to the learned trial Court to cancel the bail and to take the petitioner into custody till the conclusion of the trial.

VII. In the event the petitioner cannot appear before

the trial Court for any compelling reason he would ensure that he has taken steps and is duly represented by his learned counsel and would not pray for adjournment and the counsel for the petitioner shall participate in the proceedings and cross-examine witnesses and/ or argue his case.

7. The records of BA 123/2023 may be detached.
8. This application stands disposed of.

JUDGE

Comparing Assistant