

GAHC010014612024



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

Case No. : Bail Appln./251/2024

IMAN ALI
S/O LT. OMAR ALI
R/O BERUBARI, P.S. PALTAN BAZAR,
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:Ayesha Khatun
W/O- Anowar Hussain
Vill-Oudubi pt.I
P.S- Jogighopa
Dist- Bongaigaon
Assa

Advocate for the Petitioner : MR A HAWARI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 15.05.2024

Heard Mr. P.K. Roychoudhury, learned counsel for the accused and Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State respondent No. 1. Also heard Mr. P. Saikia, learned legal aid counsel for the respondent No. 2/informant.

2. This petition, under Section 439 Cr.P.C. is preferred by the accused, namely, Iman Ali, who has been languishing in jail hazot in connection with Jogighopa P.S. Case No. 280/2023, under Section 363 of the IPC, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Ayesha Khatun on 21.11.2023. The essence of allegation made in the FIR dated 21.11.2023, is that one Afaj Uddin of Kataniapara, under Dhula P.S., Darrang district had circulated some vulgar photographs of her minor daughter, namely, Smt. X (name withheld), aged about 15 years in social media through the mobile of one Zakir Hussain and Hasen Ali and thereafter, Zakir Hussain and Hasen Ali circulated the photographs of her daughter in the mobile of different persons. Then, knowing about the photographs being made viral in the social media, her minor daughter went missing w.e.f. 18.11.2023, at about 10 a.m. from her house and she could not be traced out.

4. Mr. Roychoudhury, learned counsel for the accused submits that the accused was arrested on 03.01.2024, and since then he has been languishing in jail hazot for last 137 days. Mr. Roychoudhury further submits that after

completion of investigation, the I.O. has already laid charge-sheet. Mr. Roychoudhury also submits that the name of the accused finds no mention in the FIR and that he is no way involved with the offence alleged in the FIR and that Section 6 of the POCSO Act is not attracted against the present accused, and that he is ready to face trial, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. B.B. Gogoi, learned Addl. Public Prosecutor referring to the scanned copy of the record received from the learned Court below, submits that the I.O. has collected sufficient incriminating materials against the accused, and therefore, Mr. Gogoi has contended to dismiss the petition.

6. Subscribing the submission of Mr. Gogoi, Mr. P. Saikia, learned legal aid counsel for the respondent No. 2/informant also submits that though the name of the present accused is not there in the FIR, yet in the statement of the victim girl recorded under Section 161, Cr.P.C., the victim girl has clearly implicated the present accused with the offence under Section 6 of the POCSO Act, and that the offences are serious in nature, and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully 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 along with the status report.

8. It appears that the investigation of the case has already been completed and charge-sheet has been submitted against Afajuddin and Iman Ali to stand trial under Section 363, IPC, added Section 344, IPC, read with Section 6 of the POCSO Act. Further, it appears that the victim girl was recovered from the

possession of the present accused and a TIP was conducted and he was identified by the victim girl during the TIP, and she has implicated the accused in no uncertain terms with the offence under Section 6 of the POCSO Act.

9. Having regards to the above and also the nature and gravity of the offence, and also the punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused at this stage. And accordingly, this bail application stands dismissed.

10. Before parting with the record, I wish to place my appreciation on record as regards the services rendered by Mr. P. Saikia, learned legal aid counsel appearing for the respondent No. 2/informant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the legal aid counsel.

JUDGE

Comparing Assistant