

GAHC010018732024



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

Case No. : Bail Appln./314/2024

AZHARUL ISLAM @ AZAHARUL SK.
S/O MANIRUDDIN SK., VILL PACHIM BHADRAGAON PS AND DIST
BONGAIGAON ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:RESHMINA BEGUM (VICTIM)
D/O ABUR ALI
VILL-MESNARKUTI
P.O.-LAKHIGANJ
P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 27.02.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. B.B.

Gogoi, learned Additional Public Prosecutor appearing for the State and Mr. A. Rahman, learned counsel for the respondent No. 2.

This is an application made under **Section 439 Cr.P.C.**, seeking bail by the petitioner, namely, **Azharul Islam @ Azaharul SK.**, in connection with **Special (P) Case No. 115(BNG)/2023(arising out of Bongaigaon P.S. Case No. 66/2023)**, registered under **Section 17 of POCSO Act r/w Section 9/10 of Prohibition of Child Marriage Act, 2006**, pending in the court of learned Special Judge, Bongaigaon.

It is submitted by the learned counsel for the petitioner that after their marriage, the petitioner and the victim lived together as husband and wife. There is no allegation against the petitioner that the petitioner has committed any such crime which falls under the provision of POCSO Act. It is also submitted that at the time of marriage, the victim was more than 18 years of age, so Child Marriage Act will not come into play in this case. However, the petitioner was shown as absconder in the charge-sheet and NBWA was issued against him. The petitioner has been languishing in jail hazot for the last 38 days. Considering the background of the case as well as period of detention, bail may be granted to the petitioner.

Mr. Rahman, learned counsel represented the respondent No. 2 has submitted that the petitioner and the victim lived together as husband and wife. The victim is about 18 years of age at the time of solemnization of her marriage. He has no objection if the bail is granted to the petitioner.

On the other hand, Mr. Gogoi, learned Additional Public Prosecutor for the State has submitted in the same tune that after marriage, the petitioner and the victim lived together as husband and wife. He further submits that the victim was more than 18 years of age at the time of her marriage with the petitioner.

I have considered the submissions made by the parties. I have also perused the scanned copy of LCR.

It appears that at the time of marriage, the victim was more than 18 years of age and they lived together as husband and wife. Considering the fact as well as the length of detention of the petitioner, this Court is of the view that further custodial detention of the accused-petitioner is not necessary.

Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **Special (P) Case No. 115(BNG)/2023(arising out of Bongaigaon P.S. Case No. 66/2023)**, registered under **Section 17 of POCSO Act r/w Section 9/10 of Prohibition of Child Marriage Act, 2006**, on furnishing bail bond of **Rs.20,000/- with a suitable surety** of the like amount to the satisfaction of learned Special Judge, Bongaigaon. The direction for bail is further subject to the condition that the accused-petitioner:

- (a) shall not leave the territorial jurisdiction of learned Special Judge, Bongaigaon, without prior written permission from him/her;
- (b) 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 the Court or to any police officer.

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

JUDGE

Comparing Assistant