

GAHC010024702024



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

Case No. : Bail Appln./369/2024

HABIJUL ISLAM
S/O NUR ISLAM @ PANA
R/O NO. 3,
NACHANGURI
P.S. BONGAIGAON,
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM
2:SAFIYA KHATUN
S/O LATE ANSAR ALI
R/O HAPACHERA ,P.S. BONGAIGAON
DIST. BONGAIGAON, ASSAM
PIN-78339

Advocate for the Petitioner : MR S M ABDULLAH P
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 05-03-2024

Heard Mr. S. M. Abdullah P, learned counsel for the accused. Also heard Mr. B. Sarma, learned Addl. P.P. for the State respondent.

This application, under Section 439 Cr. P. C. is preferred by accused, Habijul Islam, who has been languishing in jail hajot, in connection with Bongaigaon P.S. Case

No. 565/2023, under Sections 376(2)(m)/313/325 IPC R/W Section 6 of POCSO Act R/W Section 75 of Juvenile Justice Act, for grant of bail.

The above noted case has been registered on the basis of an FIR lodged by one Sofia Khatun on 29.12.2023.

The essence of allegation, made in the FIR, dated 29.12.2023 is that on 27.12.2023, at about 10 AM, she found her minor daughter Smt 'X' (name withheld) aged about 16 years, missing from her house and later on, she came to know that accused No.1, Habizul Rahman has kidnapped her daughter and taken her to his house and then accused No.2, Nur Islam and accused No.3, Nurema Khatun assaulted her daughter and driving her out of the house at about 8 PM at night. And later on, she came to know that taking her absence in her house, accused No.1 Habijul Islam used to commit sexual intercourse with her daughter on several occasions.

Mr. Abdulla, learned counsel for the accused submits that the accused was arrested on 8.1.2024, and since then he is languishing in jail hajot for 58 days and that there was a love relationship between the accused and the victim girl and that the accused is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

On the other hand, Mr. Sharma, learned Addl. P. P. has produced the case diary and submits that as per statement of the victim girl recorded u/s 164 Cr.P.C., there was relationship between the accused and victim girl. However, Mr. Sarma submits that the age of the victim girl at the relevant point of time was 16 years and therefore, Mr. Sarma has opposed the petition.

However, Ms. P. Das, learned counsel for the respondent No. 2 submits that respondent No.2 has no objection in the event of releasing the accused on bail. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Sarma, learned Addl. P.P for the State respondent.

It appears that the accused was arrested on 8.1.2024, and since then he has been languishing in jail hajot for last 58 days. In view of the materials collected so far in the case diary, specially the statement of the victim u/s 164 Cr.P.C as well as the stage of investigation, this Court is of the considered opinion that further custodial detention of the accused seems to be not warranted, in the interest of investigation and therefore, this Court is inclined to allow the petition. 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, Bongaigaon, the accused be enlarged on bail

Case diary be returned.

JUDGE

Comparing Assistant