

GAHC010027472024



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

Case No. : Bail Appln./421/2024

MD. ABDUL BAREK
R/O VILL- PORAGAON
P.S. SORBHOG
DIST. BARPETA, ASSAM

VERSUS

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

2:FIROJA BEGUM
W/O ABDUL RAHIM
R/O PURAGAON
P.S. SORBHOG
DIST. BARPETA
ASSA

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 05.03.2024

Heard Mr. B. Chowdhury, learned counsel for the petitioner. Also heard Mr. D. P. Goswami, learned Additional Public Prosecutor for the State respondent and Mr. J. Ali, learned counsel appearing on behalf of the respondent No. 2/informant.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been arrested in connection with Sorbhog P.S. Case No. 110/2023, under Sections 341/325/34 of the Indian Penal Code *read with* Section 4 of the POCSO Act, 2012.

Scanned copy of the case record along with the Case Diary has been received. Perused the same. Heard both sides.

Mr. B. Chowdhury, learned counsel for the petitioner, submitted that the accused/petitioner is innocent and false and concocted allegation has been brought against him only as a counterblast of the F.I.R. filed by one Hasem Ali against the husband of the informant, wherein, apart from other Sections, Section 302 IPC was also added. Further he submitted that from the statement made in the F.I.R., it is seen that the case does not attract Section 4 (2) of the POCSO Act, under which the charge has been framed, and at best it may attract

Section 8 of the POCSO Act. Further he submitted that the petitioner is behind the bar since 16.11.2023 and considering his length of detention, he may be enlarged on bail. As the case has already been Charge-Sheeted, there is no chance of hampering or tampering with the evidence or investigation. Rather, the accused/petitioner will regularly appear before the learned Court below on each and every date fixed by the learned Court below.

In this context, Mr. D. P. Goswami, learned Additional Public Prosecutor, has submitted that the case has already been Charge-Sheeted and at present, the case is at the stage of evidence and hence, he submitted that if the petitioner is allowed to go on bail at this stage, the probability of hampering or tampering the evidences of the witnesses cannot be denied and accordingly, he submitted that it is not at all a fit case to allow the accused/petitioner to go on bail.

Mr. J. Ali, learned counsel appearing on behalf of the respondent No. 2/informant, also submitted that the case is proceeding expeditiously and within a very short period, the Charge-Sheet has also been laid and the case is presently pending at the stage of evidence. He further submitted that till date neither the victim nor the informant are being examined and hence, the probability of hampering or tampering of the evidences of the witnesses cannot be denied and accordingly he raised objection in granting bail to the accused/petitioner.

After hearing the submissions made by the learned counsels appearing on behalf of the parties, I have perused the case record and the statement made

by the victim under Section 164 Cr.P.C. It is a fact that in the F.I.R., there is no mention about the sexual penetrative assault, but the victim in her statement recorded under Section 164 Cr.P.C. has clearly brought the allegation of penetrative sexual assault against the accused/petitioner and considering the age of the victim and the allegation brought against the accused/petitioner, I find that the submission made by the learned counsel for the respondents regarding the probability of tampering with the evidences of the witnesses cannot be denied at this stage, specially the minor victim.

In view of above and also considering the entire aspect of the case, I find it not a fit case to extend the privilege of bail to the accused/petitioner at this stage prior to recording of the statement of the victim and the informant and accordingly, the same stands rejected.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant