

GAHC010042452024



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

Case No. : Bail Appln./567/2024

AMRINDER SINGH WALIA
S/O COL. MANJIT SINGH WALIA
RESIDENT OF HOUSE NO. 155/1 RANJIT NAGAR AMBALA CITY, PS
BALDEV NAGAR, HARYANA

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:BIRAKSON RAMCHIARY
CHANGSARI POLICE STATION
AMINGAON
GUWAHATI ASSA

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

29.02.2024

Heard Ms. T. Som, learned counsel for the petitioner. Also heard Mr. A. Begum, learned Additional Public for the State of Assam.

This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, in connection with Changsari P.S. Case No.365/368/370(4) of the Indian Penal Code.

It is submitted by the learned counsel for the petitioner, Ms. Son, that the present petitioner was earlier granted interim protection vide order dated 07.06.2023 and accordingly, the case was fixed on 11.08.2023 for production of the case diary; thereafter, the petitioner abiding the conditions of the said bail order, he appeared before the I. O. and was thoroughly interrogated and his statement was recorded under Section 161 of Cr. P. C. But, subsequently, the case has been charge-sheeted and the matter was put up before this Court and vide order dated 17.02.2024, the interim pre-arrest bail was extended with a direction to appear before the learned Trial Court with a proper bail application. Accordingly, by abiding the conditions of this Court, he appeared before the learned Additional Sessions Judge, Kamrup, Amingaon with a bail application and the same was rejected and he was remanded to the judicial custody. Accordingly, the instant application has been filed for regular bail.

She further submitted that with a similar contention another First Information Report(FIR) was lodged against the present petitioner with same

allegation of kidnapping of the minor girl and thus, subsequent FIR ought not to have registered and it may be consider as the statement made under Section 162 of Cr. P.C. She further submits that the accused petitioner is an Indian Army personnel and he will appear in each and every date fixed by the Court and will accordingly contest the case.

In this regard, the learned Additional Public Prosecutor, Ms. A. Begum, has submitted that the accused/petitioner appeared before the learned Trial Court by abiding all the bail conditions of this Court after the 5th day of the order passed. Thus, she submits that considering the conduct of the accused/petitioner, his bail prayer may be considered.

After hearing the submissions of the learned counsels appearing for the parties, I have perused the case record as well as the order passed by the learned Additional Session Judge cum POCSO, Kamrup, Amingaon in Special POCSO Case No. 129/2023, wherein, it has been observed that the allegation made against the accused/petitioner is not only the sexual assault upon the minor victim who is hardly 4 years of age but there is also an allegation of committing murder of the victim's mother.

So, considering the entire facts and circumstances of the case and also considering the gravity of the offence, it is held by the learned Trial Court that there is every probability of hampering and tampering of the witnesses in this case and accordingly, his prayer for bail was rejected. From the order passed by the learned Trial Court, it is seen that that the accused/petitioner was not only charged with the kidnapping or penetrative sexual assault of the minor victim, but there was also an allegation of murder of the victim's mother. Thus, it is a case under Section 4 of the POCSO Act and hence, the observation made by the

learned Special Judge POCSO regarding the hampering or tampering of the witnesses cannot be denied outrightly. More so, victim's mother was alleged to have been murdered by the accused/petitioner, thus, I find that releasing the accused/petitioner on bail may hamper and tamper the witnesses of the prosecution, specially the minor victim, Accordingly, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused/petitioner at this stage and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant