

GAHC010047302024



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

Case No. : Bail Appln./645/2024

SHOFIQUE UDDIN
S/O- SAHER UDDIN, R/O- KADAMONI PATHAR, P.S. JURIYA, NAGAON,
ASSAM, PIN- 762124.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P., ASSAM

2:ABDUL MUTALLIB
S/O- LATE HAFIZ UDDIN
R/O- KADAMONI PATHAR
P.S. JURIYA
NAGAON
ASSAM
PIN- 762124

Advocate for the Petitioner : MR. A LAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 06.03.2024

Heard Mr. A. Lal, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent No. 1 and Ms. R. D. Mozumdar, learned counsel for the respondent No. 1/informant.

2. 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 Special POCSO Case No. 197/2022, under Sections 376/511 *read with* Section 8 of the POCSO Act, arising out of Juria P.S. Case No. 253/2022 and the Charge-Sheet No. 452/2022.

3. It is submitted by Mr. A. Lal, learned counsel for the petitioner, that after obtaining the order dated 21.02.2024, passed in AB No. 96/2024, the present accused/petitioner appeared before the learned Court below with a petition for regular bail as till his appearance he was under the interim protection. However, when he appear before the Court of learned Special Judge, POCSO, Nagaon his bail petition was rejected and the accused was sent to judicial custody vide order dated 27.02.2024. It was observed by the learned Special Judge, POCSO, that at the relevant time of incident, the victim was a minor girl of 16-17 years of age and *prima facie* there is sufficient incriminating materials against the accused/petitioner in the Case Diary and apart from that, the allegation is also very serious in nature and trial is yet to be commenced. Further, the victim is not yet examined and the release of the accused on bail may lead to tampering

or hampering of prosecution evidences, specially the vital witness of the case, i.e. the victim. With the said observation, the prayer for bail was rejected and the petitioner was sent for judicial custody.

4. The learned counsel for the petitioner further submitted that the accused/petitioner was declared as an absconder and thereafter an anticipatory bail application was filed wherein it is observed by this Court that there was no such endeavour made by the police to interrogate the accused/petitioner during the entire investigation of this case and also observed that the petitioner appeared before the learned Court below on 19.01.2024 with a petition, which was accordingly allowed fixing the date for appearance on 27.03.2024.

5. He further submitted that as the medical evidence as well as the statement of the victim recorded under Section 164 Cr.P.C. is already available in the case record, there could be no reason to held that there will be hampering or tampering of the evidence of the prosecution witnesses, specially the minor victim of this case. It is further submitted that the accused/petitioner will contest the case and will regularly appear before the Court as and when the date is fixed.

6. In this context, Mr. M. P. Goswami, learned Additional Public Prosecutor, has submitted that the case is of serious in nature and there is not only the allegation of sexual assault on the victim, but from the F.I.R., it is seen that the girl tried to commit suicide after the said incident. Accordingly, he raised objection and submitted that the probability of hampering or tampering the evidences cannot be denied at this stage.

7. Ms. R. D. Mozumdar, learned counsel for the respondent No. 2/informant, has submitted that at the time of pendency of the anticipatory bail application, the informant received a notice from this Court and after receipt of the said notice, he made a contact with his engaged counsel and stated that the matter has already been settled between the parties and the F.I.R. was lodged only on mistaken of facts and his daughter, out of fear, tried to commit suicide and for that reason, the parents/ respondent no. 2 had suspicion that the present accused had misbehaved with his daughter and tried to outrage her modesty. But, after recovery of her daughter, she explained everything and stated that the accused neither misbehaved with her nor outraged her modesty and out of fear only, she took such step. But, with the passage of time, the matter has been settled between the parties and hence, the informant has no objection if the accused/petitioner is allowed to go on bail.

8. After hearing the submissions made by the learned counsels for both sides, it is seen that the observation of the learned Special Judge, POCSO, Nagaon in regards to probability of tampering with the evidence of the prosecution witnesses, specially the victim, cannot out rightly be rejected. But, from the subsequent development of the case, it is seen that the victim is in the custody of her parents/respondent No. 2, who came before this Court by swearing an affidavit that the F.I.R. was lodged only under the mistaken of facts. So, considering this fact, I find that the released of the accused/petitioner on bail may not hamper or tamper with the evidence of prosecution witness as the matter has already been settled between the parties and the girl is still under the care and custody of her parents. Therefore, I find it a fit case to extend the privilege of bail to the accused/petitioner.

9. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, POCSO, Nagaon, the accused/petitioner, namely, Shofique Uddin, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall appear before the learned Court below as and when the date is fixed;
- (ii) that the petitioner 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; and
- (iii) that the petitioner shall not leave the jurisdiction of the learned Special Judge, POCSO, Nagaon without prior permission.

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

JUDGE

Comparing Assistant