

GAHC010052352024



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

Case No. : Bail Appln./731/2024

BOLURAM BORAH @ BOLURAM BORA
S/O LATE BHUBAN CHANDRA BORAH
R/O AMGURICHUK CHAWDANG PATHAR
P.S. MERAPANI
DIST. GOLAGHAT, ASSAM

VERSUS

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

2:DIPTI THENGAL BORA
D/O LATE LAKHIRAM BORA
R/O AMGURICHUK CHAWDANG PATHAR
P.S. MERAPANI
DIST. GOLAGHAT
ASSA

Advocate for the Petitioner : MR. B D GOSWAMI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 27.06.2024

Heard Mr. B. D. Goswami, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. M. Kalita, learned Amicus Curiae appearing on behalf of the respondent No. 2/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 Spl.(P) Case No. 107/2023, under Sections 376 AB/506 (Part-II) of the Indian Penal Code *read with* Sections 6/10 of the POCSO Act, pending before the Court of learned Special Judge (POCSO), Golaghat (arising out of Merapani P.S. Case No. 56/2023, under Sections 376 AB/506 of the Indian Penal Code *read with* Section 6 of POCSO Act).

3. Scanned copy of the Case Record along with the Case Diary has been received and I have perused the same.

4. It is submitted by Mr. B. D. Goswami, learned counsel for the petitioner, that the accused/petitioner is innocent and he has not committed any offence as alleged in the F.I.R. More so, from the medical examination report of the victim, it is seen that there was no sign of any sexual intercourse on her nor there was any sign of external injury. The accused is behind the bar since 01.10.2023 and

hence, considering his length of detention, he may be enlarged on bail so that he can participate in the trial and can defend his case properly. He further submitted that the evidence of the victim has already been recorded.

5. In this context, Mr. R. J. Baruah, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials against the present accused/petitioner. More so, the victim is a minor girl of aged about 12 years and thus, there is every chance of influencing or hampering or tampering with the evidence of the informant as the other witnesses if the accused/ petitioner is enlarged on bail at this stage. The trial of the case has already commenced and the case is at the stage of evidence and the victim girl in her statement recorded under Section 164 Cr.P.C. as well as in her evidence before the Court has clearly implicated the present accused/petitioner.

6. Mr. M. Kalita, learned Amicus Curiae appearing on behalf of the respondent No. 2/informant, also subscribed to the submission made by the learned Additional Public Prosecutor and submitted that the present accused/petitioner is a habitual offender and since the victim is a minor girl, there is every probability of hampering or tampering with the evidences. Accordingly, he vehemently opposed to the bail prayer of the present accused/petitioner.

7. After hearing the submissions made by the learned counsels appearing on behalf of the parties, I have also perused the case record and the statement of the victim recorded under Section 164 Cr.P.C. as well as the evidence before the Court, wherefrom it is seen that the victim girl has directly implicated the present accused/petitioner. More so, the informant and other vital witnesses are

yet to be examined and hence, the probability of hampering or tampering with the evidence cannot be outrightly rejected at this stage. Further it is seen that the accused was also arrested in connection with Merapani P.S. Case No. 55/2023, under Sections 354 of the Indian Penal Code *read with* Section 10 of POCSO Act, in similar kind of offence.

8. The Apex Court in the case of **Kalayan Chandra Satkar Vs. Rajesh Ranjan Alias Pappu Yadav & Anr. [(2005) 2 SCC 42]** has expressed the view that the accused cannot be granted with bail solely on the ground of period of incarceration undergone by the accused. It was further held that the sole ground of delay in conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of *prima facie* case, gravity of the offence and the allegation of tampering with the witnesses by threat and inducement when on bail.

9. In the case of **Rajesh Ranjan [(2004) 7 SCC 528]**, the Supreme Court has held that mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to be enlarged on bail nor the fact that the trial is not likely to be concluded in the near future, either by itself or coupled with the period of incarceration would be sufficient for enlarging the accused on bail. It is also held that while considering the bail application, the Court must consider the nature of accusation, the severity of the punishment in case of conviction, the nature of supporting evidence, reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant and *prima facie* satisfaction of the court in support of the charge.

10. Further, in the case of **Pramod Kumar Saxena vs. Union of India & Anr.**, the Supreme Court has held that mere long period of incarceration in jail would not be *per se* illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an under trial prisoner would not be violative of Article 21 of the Constitution.

11. In view of above and also considering the entire aspects of the case, viz-a-viz the nature and gravity of offence and the punishment prescribed for the same, I am of the view that this is not a fit case where the accused/petitioner can be granted with the privilege of bail at this stage and accordingly, the same stands rejected.

12. The bail application stands disposed of in terms above.

JUDGE

Comparing Assistant