

GAHC010060772024



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

Case No. : Bail Appln./890/2024

NEKIBUR RAHMAN @ NEKIBUR
S/O HURMUJ ALI
VILL- KACHARIGAON
P.O. GAGALMARI
P.S. MAYONG
DIST. MORIGAON, ASSAM
PIN-782121

VERSUS

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

2:SAMSUL HOQUE
S/O LATE SIRAT ALI
VILL- KHATOBORI P.O. GAGALMARI
P.S. MAYONG

DIST. MORIGAON
ASSAM
PIN- 78212

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 24.05.2024

Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

Mr. B. Sarma, learned Additional Public Prosecutor for the State submits that the I/O concerned has duly served the notice upon the respondent No. 2 and the proof thereof, has been sent to him in whatsapp. A copy of the print out is kept on record.

The present application is filed under Section 439 Cr.P.C. seeking bail for the petitioner namely, **Nekibur Rahman @ Nekibur** who is in custody pending trial of POCSO Case No. 318/2023 arising out of Mayong P.S Case No. 43/2023 under Section 376/366 (A) IPC, r/w Section 6 of POCSO Act, 2012.

The trial is pending presently before the learned Special Judge(POCSO) Marigaon. This Court earlier called for the scanned copy of the record including the deposition of the witnesses already recorded. The P.W.1 victim disposed that she has been taken by the accused in a vehicle and alleged that she was raped by the petitioner. However, in her cross-examination, she specifically stated that the accused did not commit rape on her on the date of the incident and she has also not aware why the case has been lodged. She was declared hostile and was cross-examined by the prosecution. In her cross-examination by prosecution, she reaffirmed that no incident as stated by her before the Magistrate has taken place. Record also reveals that in her statement under Section 164 Cr.P.C., she

has alleged the rape. Considering the different stand of the victim at different stages of the prosecution, this Court is of the view that the petitioner has been able to make out a case for grant of bail, inasmuch as, in the meantime the victim as well as informant has already been examined and cross-examined.

Accordingly, the present bail application stands allowed and the petitioner, named above, shall be released on bail in connection with POCSO Case No. 318/2023 arising out of Mayong P.S Case No. 43/2023 under Section 376/366 (A) IPC, r/w Section 6 of POCSO Act, 2012, on furnishing bail bond of Rs.25,000/- with one suitable surety of the like amount to the satisfaction of learned Special Judge (POCSO) Morigaon, Assam.

The direction for bail is further subject to the conditions that the petitioner:

- (a) shall not leave the territorial jurisdiction of learned Special Judge (POCSO), Morigaon, Assam without prior written permission from him/her;
- (b) 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.

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

Send back the case diary.

JUDGE

Comparing Assistant