

GAHC010079902024



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

Case No. : Bail Appln./1175/2024

AMRINDER SINGH WALIA
S/O COL. MANJIT SINGH WALIA
PERMANENT RESIDENT OF HOUSE 155/1, RANJIT NAGAR, AMBALA CITY,
P.S. BALDEV NAGAR, HARYANA
PRESENTLY RESIDING IN THE ARMY CAMPUS AT CHANDPUR ENCLAVE,
SONITPUR, TEZPUR,
P.S. SONITPUR, DIST. SONITPUR, ASSAM

VERSUS

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

2:BIRAKSON RAMCHIARY
ADDL. SP (CRIME)
CHANGSARI POLICE STATION

AMINGAON
GUWAHATI
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 24.04.2024

Heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Ms. T. Som, learned Senior Counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail to the accused/ petitioner, who has been arrested in connection with Changsari P.S. Case No. 175/2023, under Sections 365/368/370(4) of the Indian Penal Code *read with* Sections 6 & 10 of the POCSO Act.

3. It is submitted by Mr. K. N. Choudhury, learned Senior Counsel for the petitioner, that the present accused/petitioner was earlier arrested in connection with an F.I.R. lodged by one Birakson Ramchiary on 15.02.2023 on the basis of an information that a suspected item inside a polythene bag was found on the road side at Changsari NH31 and on opening the bag, the dead body of one unidentified female was found inside the bag and it was suspected that the women was kidnapped and killed by some unknown culprits. Accordingly, on the basis of the said F.I.R., Changsari P.S. Case No. 58/2023, under Sections 365/302/201/34 of the Indian Penal Code, was registered and during the course of investigation, the present accused/petitioner was arrested on 25.02.2023. Thereafter, the petitioner approached this Court praying for bail and vide order dated 17.05.2023, he was granted bail after being in judicial custody for 85

days.

4. But, subsequently, another F.I.R. has been lodged at Changsari Police Station on 30.05.2023, which was registered as Changsari P.S. Case No. 175/2023, under Sections 365/368/ 370(4) of the Indian Penal Code, against the present accused/petitioner, wherein also, he approached this Court with an anticipatory bail application, being AB No. 2017/2023, and this Court, vide Order dated 07.06.2023, was pleased to grant interim pre-arrest bail to the present accused/petitioner. In the meantime, the I.O., after a period of 4 (four) months, made a prayer before the learned Chief Judicial Magistrate, Kamrup for adding Sections 6 & 10 of the POCSO Act and accordingly, the prayer of the I.O. was allowed and Sections 6 & 10 of the POCSO Act was also added. Subsequently, the I.O. filed the Charge-Sheet, vide Charge-Sheet No. 147/2023, under Sections 365/368 of the Indian Penal Code *read with* Sections 6 & 10 of the POCSO Act, dated 28.02.2023. Thereafter, this Court, vide order dated 11.08.2023 in AB No. 2017/2023, had extended the interim relief to the accused/petitioner vide order dated 07.06.2023, after filing of the Charge-Sheet, and directed the present accused/petitioner to appear before the Court of learned Special Judge, POCSO, Amingaon within 10 (ten) days from the date of passing the order with an observation that on his appearance and on his filing petition for grant of regular bail, the learned Court below shall consider the same in accordance with law and till then, the interim protection was extended. Accordingly, the present accused/petitioner appeared before the learned Special Judge, POCSO, Amingaon on 22.02.2024, but he was remanded to judicial custody without considering his bail prayer. Further it is submitted that the present accused/petitioner is no way connected/involved or associated in the

aforesaid offence against him which is registered under Sections 365/368/370(4) of the Indian Penal Code *read with* Sections 6 & 10 of the POCSO Act as alleged.

5. The learned Senior Counsel for the petitioner further submitted that the grounds, as stated in the subsequent F.I.R. dated 30.05.2023, is the same as has been stated in paragraph Nos. 5 & 6 of the previous Forwarding Report pursuant to the F.I.R. dated 15.02.2023. Further, the accused/petitioner was already in custody for a period of 85 days pursuant to the registration of the previous F.I.R. dated 15.02.2023 on the same grounds.

6. It is further submitted that the F.I.R. dated 15.02.2023 has already been lodged against the present accused/petitioner and the investigation pertaining to that F.I.R. is already going on. Further, it is the settled position of law that if the second F.I.R. is in respect of same occurrence, there cannot be any prosecution of the accused on the basis of the second F.I.R. on the same transaction initiated against him as laid down by the Hon'ble Supreme Court in **Amitbhai Anilchand Saha Vs. Central Bureau of Investigation**, reported in **(2013) 6 SCC 348**. Further it is submitted that if the information was received after the first F.I.R. dated 15.02.2023, the new information ought to have been treated as information under Section 162 Cr.P.C. received in furtherance of the first F.I.R. and as such, the subsequent F.I.R. and its additions of Sections 6 & 10 of the POCSO Act is bad in law.

7. In this aspect, Mr. Choudhury, learned Senior Counsel, further relied on a decision of Hon'ble Apex Court passed in the case of **T. T. Antony Vs. State of**

Kerala & Ors., reported in **(2001) 6 SCC 181**, wherein it has been held that there can be no second F.I.R. and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. All other subsequent information would be covered under Section 162 Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence reported in the F.I.R., but also other connected offence found to have been committed in the course of same transactions.

8. In support of his submissions, the learned Senior Counsel also relied on another decision of the Hon'ble Supreme Court passed in **Babubhai Vs. State of Gujarat & Ors.**, reported in **2011 (1) SCC (Cri) 336**.

9. Mr. Choudhury, learned Senior Counsel, further submitted that the allegation under Sections 6 & 10 of the POCSO Act has been added suddenly on 06.06.2023 without conducting any medical test on the victim and those Sections have been added with a sole intention to harass the present accused/petitioner and to keep him in judicial custody for the reason best known to the Investigating Authorities. He further submitted that the offence as alleged in the F.I.R. dated 15.02.2023 and the subsequent F.I.R. dated 30.05.2023, which was registered as Changsari P.S. Case No. 175/2023, under Sections 365/368/370(4) of the Indian Penal Code, are the same transaction of the first F.I.R. dated 15.02.2023 as the ground of arrest mentioned Clause 5 & 6 of the Arrest Memo, wherein the abduction of the minor girl is also mentioned. Thus, the second F.I.R. is barred and ought to have been treated as a statement under Section 162 Cr.P.C. and the Investigating Authority would have enquired the matter on the basis of the first F.I.R. and accordingly, it is submitted by the

learned Senior Counsel for the petitioner that it is a fit case wherein the accused can be granted with the bail. More so, he being an army personnel, there is no chance of absconding if he is granted with the privilege of bail.

10. In this context, Ms. A. Begum, learned Additional Public Prosecutor, has submitted that the case has already been Charge-Sheeted and the allegation brought against the present accused/petitioner is very serious in nature and accordingly she objected and submitted that it is not at all a fit case to grant bail to the accused/petitioner.

11. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the annexures filed along with the petition. It is seen that the first F.I.R. was lodged on 15.02.2024 after receipt of an information that one polythene bag was found on the road side of Changsari NH31 and accordingly, on the basis of the said information, G.D. Entry was made and enquiry was also done and subsequently, the F.I.R. was registered, being Changsari P.S. Case No. 58/2023, under Sections 365/302/201/34 of the Indian Penal Code. During the investigation of the first F.I.R., it has come to the knowledge of the Investigating Officer that the present accused/petitioner has not only murdered the deceased Vandhana Shree, but also abandoned one girl child Marushika at Howrah Railway Station as revealed from the Forwarding Report of the accused after his arrest. Whereas, in the second F.I.R. dated 31.05.2023, it is stated that the minor victim girl was kidnapped and concealed in the official quarter of the accused at Chandpur Enclave, Tezpur up to 21.02.2023 where she was exploited in his official quarter and then he shifted the victim to Kolkata by Flight on 21.02.2023 and with an

intention to conceal the minor girl, the accused took her to Howrah Railway Station and abandoned her for trafficking. Fortunately, the victim girl was rescued by the members of the NGO and accordingly, the second F.I.R. was lodged against the present accused/petitioner, which was registered as Changsari P.S. Case No. 175/2023, under Sections 365/368 /370(4) of the Indian Penal Code, and subsequently Sections 6 & 10 of the POCSO Act has also been added. It is a fact that in the Forwarding Report of the present accused/petitioner, in the earlier case, it was within the knowledge of the Investigating Officer that a girl child was abandoned by the accused at Howrah Railway Station and the information was only to the extent that the minor daughter of the deceased was abandoned at Howrah Railway Station by the accused. But the subsequent incident, after kidnapping of the minor girl, had come into the light of the Investigating Officer that the minor girl was not only kidnapped, but she was also confined in the official quarter of the accused, kept her till 21.02.2023, sexually exploited her in his official quarter and then only she was taken to Kolkata and thereafter to Howrah Railway Station, wherefrom she was recovered by the members of the NGO. Hence, the subsequent F.I.R. has been lodged against the present accused/petitioner under Sections 365/368/370(4) of the Indian Penal Code and subsequently, during investigation, it has come out that the girl was not only kidnapped, exploited or abandoned for trafficking, but also she was sexually assaulted and hence, the prayer for adding Sections 6 & 10 of the POCSO Act was also made by the I.O., which was accordingly allowed by the learned Chief Judicial Magistrate. Thus, it is seen that though the subsequent incident had happened from the same transaction, but the allegation of kidnapping and keeping the minor girl for trafficking and then her sexual exploitation came out subsequently. Hence, it

cannot be held to be the second/subsequent F.I.R. out of same transaction and the fact disclosed in the earlier F.I.R. was only to the extent that the deceased along with the victim of the present case was kidnapped and the minor child was abandoned in the Howrah Railway Station. So, the second F.I.R. is not hit by Section 162 Cr.P.C.

12. More so, the present case, which has been subsequently registered against the present accused/petitioner, has already been Charge-Sheeted and the case is pending at the stage of trial at present. Further, the contents of the first F.I.R. is also substantially different from the second F.I.R. and the offence committed under the second F.I.R. is also different and heinous in nature. So, only considering the ground that the kidnapping of the minor child was within the knowledge of the Investigating Officer, the second F.I.R. against the present accused/petitioner cannot only be treated as a statement under Section 162 Cr.P.C. In the earlier F.I.R., it was the specific allegation of kidnapping and murder of the mother of the present victim girl and in the subsequent F.I.R., it was not only the allegation of kidnapping and exploitation and trafficking of the minor victim girl, but the allegation of penetrative sexual assault on the minor girl is also brought, who is only 4 years of age at the time of incident which is a different offence with different victim.

13. In the case of **Uday Shankar Awasthi Vs. State of Uttar Pradesh & Anr.**, reported in **(2013) 2 SCC 435**, the Hon'ble Supreme Court has held that the second F.I.R. shall be permissible even on the same facts provided:-

- (i) the earlier complaint has been decided on the basis of insufficient

material

- (ii) the order has been passed without understanding the nature of the complaint
- (iii) the complete facts could not be placed before the Court
- (iv) where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour.

14. Again, in the case of **Om Prakash Singh Vs. The State of Bihar**, reported in **(2018) 9 SCC 440**, the Hon'ble Supreme Court has held that where the appellant comes to know about certain facts after disposal of the first complaint, there will be no bar to lodge the second complaint.

15. Further the legality of the 2nd F.I.R. was extensively discussed in the case of **T. T. Antony (supra)** and the Hon'ble Supreme Court has expressed the view that the facts and circumstances giving rise to the second F.I.R. must be different or offence committed in the 2 (two) F.I.Rs. must be different or person accused of committing the offence is different. Only then the second F.I.R. is permissible.

16. So, considering the entire facts and circumstances of this case, nature and gravity of the offence alleged against the present accused/petitioner and the probability of absconding or influencing the witness, especially the minor victim girl, cannot be denied at this stage. Therefore, this Court is of the view that this is not a fit case where the accused/petitioner can be granted with the privilege of bail and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant