

GAHC010103752024



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

Case No. : Bail Appln./1511/2024

ASHIDUL MONDAL @ RAHUL
S/O KHALIL MONDAL
R/OVILL- TUKUTA PT. II,
P.O. TUKURA
P.S. AGIA
DIST. GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:NUR BANU
W/O CHANDU ZAMAN
VILL- KUCHUNIMARA
P.S. MANKACHAR

DIST. SOUTH SALMARA
ASSA

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : PP, ASSAM

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

26.06.2024

Heard Mr. H. Das, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent No.1 and Mr. R. Sarma, learned counsel for the respondent No.2.

This application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been languishing in jail *hazot* since 08.03.2024 in connection with Mankachar P.S. Case No.67/2024 registered under Sections 365/366(A) added Section 376(3)/34 of the Indian Penal Code *read with* Section 4 of the POCSO Act.

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioner, Mr. Das, that the present petitioner is innocent and he is no way involved in the alleged offence. From the FIR itself, it is seen that the victim was major at the relevant time of the incident i.e. 22 years. As per the FIR, the incident had occurred on 08.02.2024, but, the FIR was lodged on 04.03.2024 and also the reason for delay has not been explained by the informant. More so, the petitioner is behind the bar for last 79 days and accordingly, considering the length of detention undergone by the accused/petitioner, he may be enlarged on bail as the I.O. has got sufficient time for his custodial interrogation. Further, the petitioner is the permanent resident of his addressed locality and thus, there is no chance of absconding, if he is enlarged on bail, rather he will co-operate the IO with

further investigation of the case.

In this context, Mr. Goswami, learned Additional Public Prosecutor, has submitted that the age of the victim has been wrongly mentioned in the FIR as the informant/respondent No.2 being an illiterate woman had put her thumb impression in the FIR without going through the contents of the FIR. However, from the materials available in the Case Diary, it is seen that the IO has collected the Birth Certificate of the victim and as per the said certificate, the victim was born on 09.07.2011 and thus, it is seen that at the relevant time of the incident the victim was 13 years. Further from the statement of the victim recorded under Section 164 of Cr.P.C., it is clear that the accused/petitioner had committed penetrative sexual assault upon the victim. He accordingly submits that there are sufficient incriminating materials available against the accused/petitioner showing his involvement in the alleged offence. Thus, considering the statement of the victim and the materials available in the Case Diary, he raised objection in allowing the accused/petitioner to go on bail only on the ground of length of detention.

On the other hand, Mr. Sarma, learned counsel for the respondent No.2 has submitted that the accused/petitioner had already admitted his guilt before the IO. He further submitted that the accused/petitioner is threatening the victim and her family members and thus, there is a probability of hampering and tampering of evidence of the witnesses by the said accused/petitioner who is an influential person in that locality. Accordingly, at this stage he raised objection to enlarge the accused/petitioner on bail.

After hearing the submissions made by the learned counsel for both sides, I have perused the Case Diary as well the Case Record, it is seen that there are

sufficient incriminating materials available against the accused/petitioner and also the victim has brought the allegation of penetrative sexual assault against him. More so, considering the fact that the victim was a minor at the relevant time of the incident as well as submissions made by the learned counsel for the respondents, I find that further custodial interrogation of the accused/petitioner may be necessary to unearth some facts of this case; and therefore, I find it not a fit case to enlarge the accused/petitioner on bail and accordingly, the same stands rejected.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant