

GAHC010105072024



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

Case No. : Bail Appln./1536/2024

SHAMSUN NAHAR
W/O ZAMAL BADSHA
VILL- DIGJANI
P.S. KALGACHIA
DIST. BARPETA, ASSAM

VERSUS

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

2:SHAMJAN NESSA
W/O NASIR HUSSAIN
VILL- KHUDRAKUCHI
P.S. KALGACHIA
DIST. BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 12.06.2024

Heard Mr. H.R.A.Choudhury, learned Senior Counsel assisted by H.Ali, learned counsel for the

petitioner as well as Mr. R.J.Baruah, learned Addl. P.P., Assam for the State respondent No.1. Also heard Mr. R.Hoque, learned counsel for respondent No.2.

This is an application filed under Section 439 Cr.P.C., by the petitioner, **Shamsun Nahar** praying for bail in connection with **Kalgachia PS case No. 36/2024** under Sections 366/376(1)/313/417/34 IPC r/w Section 6 of the POCSO Act.

The learned counsel for the petitioner submits that the petitioner is a ward girl in the Barpeta Civil Hospital since 2013, working as a Grade-IV employee. It is further submitted that Sections 376/366 IPC or Section 6 of POCSO Act is not attracted against the present petitioner. It is further submitted that petitioner is in judicial custody for last 49 days, and considering length of detention, petitioner may be enlarged on bail.

The learned Addl.P.P. has produced the case diary and submits that the petitioner has accompanied the victim girl to one Rokiya Khatun who is the in-charge of Operation theatre in the hospital. The said Rokiya Khatun has prescribed the medicine for terminating the pregnancy of the victim girl.

The learned counsel for the respondent No. 2 has submitted that he has no objection if the petitioner is granted bail.

I have perused the case diary including the statement of the victim girl recorded under section 164 CrPC wherein she had stated that due to physical relationship with one Faruk, she became pregnant. Her pregnancy was terminated against her will at Kalgachia hospital and the accused family have paid Rs.10,000/- to the nurse. One of the nurse is the petitioner. However, it appears that the petitioner is not a nurse but she is a Grade –IV employee in the hospital. It transpires that the petitioner was present at the time of terminating the pregnancy of the victim.

Having heard learned counsel for the parties as well as perusal of case diary and considering the length of detention, this Court is of the opinion that further custodial interrogation of the petitioner in the interest of investigation is not warranted.

Accordingly, it is provided that the petitioner named above shall be released on furnishing bail bond of **Rs. 50,000/-** with two sureties of like amount to the satisfaction of the learned **Additional Sessions Judge –cum-Special Judge (POCSO), Barpeta**, subject to the following conditions;-

- (i) The petitioner shall not leave the territorial jurisdiction of learned **Additional Sessions Judge –cum-Special Judge (POCSO), Barpeta**, without prior written permission from him/her;
- (ii) That the petitioner shall cooperate with the Investigating Officer as and when required;

- (iii) 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 Police Officer or the Court.

Violation of any condition shall tantamount to cancellation of bail.

This disposes of the bail application.

Return the case diary.

JUDGE

Comparing Assistant