

GAHC010107562024



2024:GAU-AS:12456

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

Case No. : Bail Appln./1584/2024

CHANDAN BORAH
S/O LATE BULMONI BORAH
R/O NAHORANI BALICHANG
P.S. BALICHANG
DIST. BISHWANATH CHARIALI, ASSAM

VERSUS

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

2:SMT. SANGITA DEVI
W/O TUNU SINGH
R/O SHANTI NAGAR
FOREST GATE

NOONMATI
P.S. NOONMATI
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR S BORTHAKUR, MR S DAS

Advocate for the Respondent : MS. M K BROWN, AMICUS CURIAE (R-2),

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10-12-2024

Heard Mr. S. Das, learned counsel for the petitioner and Mr. K. K. Parasar, learned Additional Public Prosecutor, Assam for the for the respondent No.1. Also heard Ms. M. K. Brown, learned Amicus Curiae for the respondent No.2.

2. The petitioner, namely, **Sri Chandan Borah**, son of late Bulmoni Borah, resident of Village-Nahorani Balichang, P.S.-Balichang, District-Biswanath Chariali has filed this application under Section 439 CrPC, seeking bail in **Paltan Bazar P.S. Case No. 105/2024** registered under Section 376 IPC, read with Section 6 of the POCSO Act.

3. The petitioner is a charge-sheeted accused in Sessions (Special) Case No. 130/2024 arising out of said Paltan Bazar P.S. Case No. 105/2024 registered under Section 376 IPC, read with Section 6 of the POCSO Act, in which, he was arrested on 27.03.2024 and is in custody since then.

4. The record of the case was called for by order dated 03.06.2024.

5. It is also seen that the minor victim girl, in the meanwhile, gave birth to a baby and on the prayer of the concerned Investigating Officer of the case, the learned Special Judge (POCSO), Kamrup (M), Guwahati allowed the said Investigating Officer to obtain the blood sample of the petitioner for the DNS

test and the child born to the minor victim girl.

6. Mr. Parasar, learned APP on instruction submitted that the DNA report was received from the Forensic Laboratory, Assam and that the concerned Investigating Officer shall place the same before the learned Special Judge (POCSO), Kamrup (M), Guwahati in said Sessions (Special) Case No. 130/2024 on the next date fixed.

7. It is seen from the case records that evidence of two prosecution witnesses have already been recorded and that the next date of the case is fixed on 20.12.2024.

8. Learned counsel for the petitioner submitted that it was a conscious act between the petitioner and the victim.

9. Ms. M. K. Brown, learned Amicus Curiae appearing for the informant/respondent No.2 submitted that the victim was a minor, aged about 16 years when the alleged incident occurred and her consent is immaterial, whereas, the accused petitioner was a major.

10. Considering such materials in the case record and hearing the submissions of the learned counsel for the parties, this Court is of the view that it is not a fit case to grant bail to the petitioner considering his detention in custody since 27.03.2024 in said Sessions (Special) Case No. 130/2024 arising out of said Paltan Bazar P.S. Case No. 105/2024 registered under Section 376 IPC, read with Section 6 of the POCSO Act.

11. Accordingly, this bail application of the petitioner, **Sri Chandan Borah**, in said Sessions (Special) Case No. 130/2024 arising out of said Paltan Bazar P.S. Case No. 105/2024 registered under Section 376 IPC, read with Section 6 of the POCSO Act **stands rejected**.

12. Gauhati High Court Legal Services Authority shall pay the remuneration to Smt. Manisha Karen Brown, learned Amicus Curiae for assisting the Court in adjudicating this case, on raising a bill.

JUDGE

Comparing Assistant