

GAHC010108602024



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

Case No. : Bail Appln./1621/2024

KAPIL ROY
S/O SRI MAKHAN LAL ROY
VILL- SRIRAMPUR, P.S. KAILASHAR
DIST. UNAKUTI, TRIPURA
PIN-799277

VERSUS

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

2:DILWARA BEGUM
D/O LATE NAZIMUDDIN

VILL- MASLEY
P.O. BHANGA BAZAR

P.S. BADARPUR
DIST. KARIMGANJ
ASSA

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : Mr. R. J. Baruah, Addl. PP, ASSAM

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

18.06.2024

Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

This is an 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 19.03.2024 in connection with Badarpur P.S. Case No. 81/2024 (POCSO 15 of 2024) under Sections 341/325/354 of IPC *read with* Section 8 of the POCSO Act.

I have received the scanned copy of the LCR and I have perused the same

It is submitted by the learned counsel for the petitioner, Mr. Biswas that since 19.03.2024, the petitioner is in custody and the case has already been charge-sheeted and the charges are framed under Sections 341/323/354 of IPC *read with* Section 8 of POCSO Act. He also submitted that the informant had lodged the FIR with some false and concocted allegation against the present petitioner, after lodging of the FIR by the petitioner which was registered as vide No. 80/2024 under Sections 147/341/325/307/427 of IPC. He further submitted that the accused/petitioner is behind the bar since more 90 days and he also submitted that the maximum punishment under Section 8 of POCSO Act is only 3(three) years. The accused/petitioner is a permanent resident of the address locality and he will appear before the learned Trial Court on each and every date fixed. Hence, considering his length of detention, he may be enlarged on bail.

In this context, Mr. Baruah, learned Additional Public Prosecutor has raised objection and submitted that the case has been registered under Sections 8 of the POCSO Act and hence, he submitted that till recording the statement of the victim, the

accused/petitioner may not be released on bail.

On the other hand, Mr. Biswas, learned counsel for the petitioner has submitted that the accused can be released on bail, even after filing of the charge-sheet. In addition to his submission, he relied on a decision passed by the Supreme Court reported in **2018 (3) SCC 22 [Dataram Singh vs. the State of Uttar Pradesh & Anr.]** and also relied on a decision of Supreme Court passed in **Shariful Islam @ Sarif vs. the State of West Bengal, decided on 04.08.2022**. He further relied on a decision passed by this Court in A.B. Case No.2526/2023 dated 26.09.2023.

Considering the submissions of learned counsels for both sides and also considering the materials available in the records as well as the length of detention already undergone by the accused/petitioner, I find it appropriate to allow the accused/petitioner to go on bail as I find that further custodial detention is not necessary.

Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, POCSO, Karimganj, the accused/petitioner, namely Kapil Roy, be enlarged on bail, subject to the following conditions:

- (i) 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 Court or to any police officer; and
- (ii) that the petitioner shall not leave the jurisdiction of the learned Special Judge, POCSO, Karimganj, without prior permission.

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

JUDGE

Comparing Assistant