

GAHC010108742024



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

Case No. : Bail Appln./1569/2024

THOMAS BASUMATARY
S/O POLEN BASUMATARY,
PERMANENT RESIDENT OF ANSEFURI (BARPETA ROAD) PS
GOBARDHANA, DIST BAKSA, ASSAM
TEMPORARY ADDRESS LUIT NAGAR, HOUSE NO. 43A, PS SATGAON, DIST
KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:BIPUL DAS
S/O LATE RATNESWAR DAS
RESIDENT OF PRAGATI NAGAR
BYE LANE NO. 5
HOUSE NO. 16
PS SATGAON
GUWAHATI KAMRUP M ASSA

Advocate for the Petitioner : MR. N MAHAJAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

27.06.2024

- 1.** Heard Mr. B.K. Mahajan, learned counsel for the petitioner and also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam, appearing for the State respondent as well as Ms. M.K. Brown, learned Amicus Curiae, to defend the cause of the respondent No. 2.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Thomas Basumatary, who has been detained behind the bars since 24.05.2024 (for last 36 days) in connection with Satgaon Police Station Case No. 81/2024 under Section 376 of the IPC read with Section 4 of the Protection of Children from Sexual Offence Act, 2012.
- 3.** The gist of accusation in this case is that the father of the victim had lodged an FIR before the Officer-In-Charge of Satgaon Police Station, *inter alia*, alleging that his daughter developed some acquaintance with the present petitioner, who lured her and called her to his rental house at Luit Nagar, Guwahati and thereafter, committed rape on her.
- 4.** The learned counsel for the petitioner has submitted that there was a relationship between the petitioner and the victim girl, who is aged about 17 years+ and the allegations levelled against the present petitioner in the FIR is not true.
- 5.** The learned counsel for the petitioner has submitted that the petitioner has already been detained behind the bars for last 36 days and considering the period of detention, his prayer for bail may be allowed.
- 6.** The learned Additional Public Prosecutor has produced the case diary

of Satgaon Police Station Case No. 81/2024 and has submitted that in her statement before the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973, the victim has stated that she was subjected to sexual intercourse by the petitioner without her consent.

7. The learned Amicus Curiae, representing the respondent No. 2 has vehemently opposed the grant of bail to the above-named petitioner on the ground that as the victim and the petitioner were in relationship earlier, there is a possibility that the victim may be influenced by the petitioner, if he is released on bail.

8. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the case diary of Satgaon Police Station Case No. 81/2024. Though there are incriminating materials against the present petitioner in the case diary, however, it appears that the investigation has fairly progressed and the petitioner has been detained behind the bars since for last 36 days. Hence, if the stringent conditions are imposed on the petitioner and if he co-operates in the investigation, his further custodial detention may not be necessary for fair completion of investigation of Satgaon Police Station Case No. 81/2024.

9. In view of above, the above-mentioned petitioner is allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only), with one surety of like amount to the satisfaction of the learned Special Judge, POCSO, Kamrup (Metro), Guwahati subject to the following conditions:

- i. That the petitioner shall co-operate in the investigation.
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts

of the case before the Investigating Officer.

10. With the above observations, this bail application is hereby disposed of.

11. Send back the case diary.

JUDGE

Comparing Assistant