

GAHC010110342024



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

Case No. : Bail Appln./1618/2024

ROFIQUL ISLAM
S/O ABDUL KADER @ KADER ALI
@ ABDUL KADER SHEIKH
R/O VILL- BAILORCHAR
P.S. DHUBRI,
DIST. DHUBRI, ASSAM

VERSUS

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

2:ANAR HUSSAIN
S/O LATE ABDUL GONI
R/O KOLAPANI PART-II
JORDARPARA
P.S. AND DIST. DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR S H SIKDAR

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 26-06-2024

- 1.** Heard Mr. S. H. Sikdar, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State.
- 2.** This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Rofiqul Islam*, who is detained behind the bars since 04.07.2023 in connection with Special Case No. 180/2023 arising out of Dhubri P.S. Case No. 266/2023 under Sections 365/376DA/306 of the Indian Penal Code read with Section 6 of the POCSO Act, 2012 pending in the Court of learned Sessions Judge, Dhubri.
- 3.** The gist of accusation in this case is that on the basis of an FIR lodged by the father of the victim girl on 30.06.2023 before the In-charge of Bazar Nagar Police Out Post, inter alia, alleging that three numbers of accused persons have kidnapped his daughter and subjected her to rape and thereafter her daughter on the next date committed suicide by hanging, Dhubri P.S. Case No. 266/2023 as registered and investigation was initiated.
- 4.** Ultimately, on completion of the investigation, charge-sheet was laid against the three accused persons including the present petitioner under Sections 365/376DA/306/34 of the Indian Penal Code read with Section 6 of the POCSO Act, 2012.
- 5.** The learned counsel for the petitioner has submitted that the petitioner has been detained behind the bars for almost one year and only five of the forty

listed witnesses have been examined. It is also submitted by the learned counsel for the petitioner that the petitioner is not involved in offence alleged in the FIR as in the FIR specific allegations are made against one Johirul Islam who is named as accused No. 1 in the said FIR. It is also submitted by the learned counsel for the petitioners that since most of the material witnesses including the informant have already been examined and since there is every likelihood that culmination of the trial involving forty numbers of witnesses would take considerable time, the petitioner may be allowed to go on bail and he is ready to abide by any conditions of bail imposed upon him.

6. On the other hand, learned Additional Public Prosecutor has submitted that the case involves offence under Section 376DA i.e., gang rape followed by suicide by the victim which is heinous in nature. He also submits that there are some material witnesses who are yet to be examined and, therefore, opposes the grant of bail to the present petitioner at this stage.

7. On the other hand, Ms. D. Saikia, learned Amicus Curiae has also submitted that from the charge-sheet, it appears that one of the friends of the deceased, namely, Mobashira Khatun who was accompanying the victim girl when the incident had occurred and who has been listed as prosecution witnesses No. 6 is yet to be examined. She has also submitted that one Jahangir Alom who was informed about the incident at the first instance and who sent one SMS to one Gazi Rahman is also the vital witness in this case and, therefore, she submits that unless these two witnesses are examined, the petitioner may not be allowed to go on bail as there is every likelihood of the witnesses being influenced if any of the accused person is released on bail before their examination. She has also submitted that considering the heinous nature of offence, the petitioner may not be granted bail only on the ground of long incarceration.

8. I have considered the submissions made by the learned counsel for rival parties and have gone through the materials available on record including the scanned copy of the Special Case No. 180/2023.

9. On perusal of the materials on record as well as after considering the submissions made by the learned counsel for the parties, this Court is of considered opinion that the offence involved in this case is heinous in nature and two of the material witnesses are yet to be examined, namely, Mobashira Khatun who has been listed as PW-6 in the charge-sheet and one Jahangir Alom and they are required to be examined before the petitioner is released on bail to ensure fair trial in this case.

10. Hence, this Court is of considered opinion that this is not the proper stage to release the above named petitioner on bail. He may file bail application before the Trial Court after examination of the above named witnesses.

11. With the above observation, this bail application is rejected.

JUDGE

Comparing Assistant