

GAHC010113762024



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

Case No. : Bail Appln./1647/2024

MRINAL BAISHYA
S/O BHUBANESWAR BAISHYA, R/O VILL- SUALKUCHI, BORNIJARA
PAHAR, P.S.-SUALKUCHI, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2: BIDYA DAS
W/O LATE KALIRAM DAS
R/O SUALKUCHI
BORNIJARA
MALAYAPUR
P.S.-SUALKUCHI
DIST- KAMRUP (ASSAM)

Advocate for the Petitioner : MR. A PARAMANIK, P. KALITA

Advocate for the Respondent : PP, ASSAM, DR. P AGARWAL, AMICUS CURIAE

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

13-12-2024

Heard Mr. A Paramanik, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State. Also heard Dr. P Agarwal, learned Amicus Curiae, for the

respondent No.2/informant.

2. The petitioner, namely, **Mrinal Baishya**, son of Bhubaneswar Baishya, resident of village-Sualkuchi, Bornijara Pahar, P.S.-Sualkuchi, District-Kamrup has filed this application under Section 439 CrPC praying for his release on bail in Special (POCSO) Case No. 167/2023 arising out of Sualkuchi Police Station Case No. 171/2023 registered under Section 376AB/506 IPC read with Section 4 of the POCSO Act, 2012, in which he was arrested on 02.11.2023 and is in custody since then.

3. The petitioner stated that he is no way connected with the case nor he is an FIR named accused and that he has been wrongly arrested and illegally detained in custody since 02.11.2023 and after his arrest charge-sheet has already been submitted by police and that deposition of the victim and the informant of the case have already been recorded. Therefore, his further detention in the case considering his custody since 02.11.2023 is not warranted.

4. Hence, this application for his bail in said Special (POCSO) Case No. 167/2023, stating that he shall abide by any terms and conditions that may be imposed upon him by the Court while considering his case for bail.

5. Mr. Sarma, learned Additional Public Prosecutor, Assam for the State and Dr. P Agarwal, learned Amicus Curiae, for the informant/respondent No.2 objected to the bail of the petitioner stating that considering the age of the victim and involvement of the petitioner in a heinous crime of forcibly committing rape of a minor girl and thereafter, threatening her not to inform the said incident to any other otherwise to face dire consequences, he is not entitled for bail in the said case till the final decision.

6. As per the FIR dated 29.10.2023 lodged by the informant the case is that in the afternoon of 02.10.2023 around 3:30 PM when the second daughter of the informant, who is a minor, with two of her colleagues from the same village went to visit their another friend from the same village, the FIR named accused person, namely, Santanu Kalita, forcefully took away her said daughter by pulling her hand and took her to the top of the hill, made her naked by removing her cloths and forcefully committed rape on her. When her said daughter cried out for help, the petitioner gagged her mouth and threatened her that if she reveals to her mother then she will be killed. On 29.10.2023, around 6 in the evening said minor daughter revealed everything to her. As such, by the said FIR the informant prayed before the authority of Sualkuchi Police Station to

enquire into the matter and take necessary action on the accused petitioner as per law.

7. Said FIR of the informant was accordingly registered as Sualkuchi Police Station Case No. 171/2023. The petitioner was arrested on 02.11.2023 and was produced before the learned Special Judge (POCSO), Kamrup at Amingaon on 03.11.2023.

8. The statement of the minor victim girl under Section 164 CrpC was recorded by the learned Judicial Magistrate First Class (II), Kamrup, Amingaon on 31.10.2023. On 30.10.2023 itself, the minor victim girl was medically examined and in that regard the Department of Forensic Medicine & Toxicology, Guwahati Medical College, Guwahati on 30.10.2023 submitted its report. After completion of the investigation of the case, police submitted the charge-sheet in said Sualkuchi P.S. Case No. 171/2023 on 10.07.2024 under Sections 376AB/506 IPC read with Section 4 of the POCSO Act against the petitioner and the other accused, namely, Santanu Kalita.

9. After filing of the charge-sheet in said Sualkuchi P.S. Case No. 171/2023, said Sualkuchi P.S. case was re-registered as Sessions Special (POCSO) Case No. 167/2023. Learned Special Judge (POCSO), Amingaon on 11.12.2023 took cognizance of the offence under Sections 376AB/506 IPC, read with Section 4 of the POCSO Act against both the accused persons of the case, including the petitioner.

10. On 30.12.2023 learned Special Judge (POCSO), Amingaon in said Sessions Special (POCSO) Case No. 167/2023 framed charge under Sections 376AB/506/115 IPC read with Section 17 of the POCSO Act and with regard to the other accused Santanu Kalita, charge under Section 376AB/506 IPC read with Section 6 of the POCSO Act was framed against him. Both the accused persons pleaded not guilty and claimed to be tried.

11. In her statement under Section 164 CrPC, the victim girl implicated the accused Santanu Kalita of committing the crime. The independent witnesses who were with the victim at the time of the incident indicated that the petitioner was present along with the said accused Santanu Kalita, when Santanu Kalita was committing forceful sexual intercourse with the minor victim. The independent witnesses in their statements before the Magistrate also indicated that the petitioner and said Santanu Kalita threatened them and forcefully took away the victim girl. Further, those independent witnesses also stated before the Magistrate that it is the petitioner who was recording such incident of committing rape on the minor victim by Santanu Kalita in the mobile. All the three minors including the victim in their statements before the Magistrate indicated that

the petitioner and the other accused Santanu Kalita blind folded the minor victim girl while she was pulled up to the hill.

12. Police during investigation, seized the birth certificate of the minor victim girl dated 20.09.2013 with Registration No. 851/2013 issued by the Medical and Health Officer, In-charge of Sualkuchi BPHC, Sualkuchi, wherein the date of birth of the victim has been indicated as 19.02.2013. As such, on the basis of the said date of birth of the minor victim as 19.02.2013, whereas the incident occurred on 02.10.2023, the said victim girl was just more than 10 years 7 months.

13. It is seen from the records of the case that the minor victim PW-1, the other independent witnesses including those who were present with the minor victim at the time of the incident, in their depositions before the learned Special Judge (POCSO), Amingaon implicated the petitioner and the other accused of their involvement in the alleged crime who were also thoroughly cross-examined by the defence including that of the petitioner as well as the other accused.

14. From the records of the case it is seen that up to 02.11.2024, evidence of six of the prosecution witnesses have been recorded by the learned Special Judge (POCSO), Amingaon.

15. As per the charge-sheet of the case, there are all together twenty prosecution witnesses, out of which six have already been examined and cross-examined up to November, 2024, which indicates that the trial of the case is progressing well.

16. Considering the above, the statement of the minor victim girl and her colleagues recorded by the learned Magistrate, the evidences so far recorded by the learned Special Judge (POCSO), Amingaon including that of the minor victim and the independent witnesses, the Court is of the opinion that the petitioner is not entitled for his bail in the case, considering his arrest on 02.11.2023.

17. Accordingly, this bail application of the petitioner, namely, **Mrinal Baishya**, son of Bhubaneswar Baishya, in said Special (POCSO) Case No. 167/2023 arising out of Sualkuchi Police Station Case No. 171/2023, presently pending before the Court of the learned Special Judge (POCSO), Amingaon, stands rejected.

18. Gauhati High Court Legal Services Committee shall pay the remuneration to Dr. Pooja Agarwal, being appointed by the Court for the informant/respondent No. 2, for her assistance in

adjudicating this matter by the Court.

JUDGE

Comparing Assistant