

GAHC010121272023



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

Case No. : Bail Appln./1980/2023

MOHAMMAD ABDULLAH @ MD. ABDULLAH MANSHURI
S/O MOHAMMAD KHALIL
R/O VILL- NO. 2 KALAIGAON
P.S. KALAIGAON
DIST. UDALGURI, BTR, ASSAM
PIN-784525

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:SMTI RENUKA GOWALA
W/O- SRI HIRA LAL GOWALA
R/O- VILL- BHOLABARI BAGHOCHA
PS- KALAIGAON
DIST- UDALGURI
ASSAM
PIN-78452

Advocate for the Petitioner : R RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

19.01.2024

Heard Mr. M. Islam, learned counsel for the accused and Mr. R.J. Barua,

learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Mohammad Abdullah @ Md. Abdullah Manshuri**, who has been languishing in jail hazot since 26.12.2022, in connection with the **Special [POCSO] Case No. 04/2023**, arising out of Kalaigaon P.S. Case No. 115/2022, under Section 376[3] of the IPC, read with Section 6 of the POCSO Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by one Renuka Gowala, on 25.12.2022. The essence of allegations made in the FIR is that her daughter Smti 'X' [name withheld] came to Bhatikhana market at Kalaigaon to buy some clothes and then one Mohammad Abdullah called her to his shop and committed rape upon her, in a room adjacent to the shop and as a result, she became pregnant and carrying 5 months pregnancy.

4. Mr. Islam, learned counsel for the accused submits that the accused was arrested on 26.12.2022, and since then he has been languishing in jail hazot more than 1 year. Mr. Islam further submits that the IO has not collected the Birth Certificate or School Certificate of the victim girl, to establish her age. Referring to the evidence recorded by the learned court below, Mr. Islam submits that there are several contradictions in the version of the victim girl as well as the other witnesses and the allegations are false and the accused has only one room in his shop and on such count, the accused is entitled to benefit of doubt and therefore, it is contended to allow this petition.

5. On the other hand Mr. Barua, learned Additional Public Prosecutor by referring to the evidence of the victim girl and other witnesses submits that the victim girl as well as the other witnesses have clearly implicated the accused with the offence alleged in the FIR and that the case is pending for examination of the

IO and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. It appears that the material witnesses have already been examined and now the case is pending for examination of the IO only.

8. In view of the evidence so brought on record by the prosecution side against the accused and also in view of the nature and gravity of the offence and also the stage of trial, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused.

9. Accordingly, the petition stands dismissed, at this stage.

10. However, the learned court below is directed to dispose of the case as expeditiously as possible.

JUDGE

Comparing Assistant