

GAHC010128162024



2024:GAU-AS:12539

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

Case No. : Bail Appln./1870/2024

LAKSHMI NATH CHOUDHURY
S/O LATE PURONDOR CHOUDHURY
HOUSE NO. 5, TRINAYAN PATH,
BELTOLA TINIALI,
P.O. BELTOLA, P.S. HATIGAON, GUWAHATI-28

VERSUS

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

2:XXXX
D/O SRI LAKSHMI NATH CHOUDHURY HOUSE NO. 5
TRINAYAN PATH
BELTOLA TINIALI

P.S. HATIGON
GUWAHATI-28
PRESENT ADDRESS-
C/O DULAL KALITA
VILL- ADABOI
P.O. AND P.S. SUALKUCHI
DIST. KAMRUP (R)
ASSAM
PIN-78110

Advocate for the Petitioner : MR. A K SARMA, MR D KALITA,MR H J TAMULI

Advocate for the Respondent : PP, ASSAM, MS P DAS (AMICUS CURIAE, R-2)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

11.12.2024

Heard Mr. A K Sarma, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State/opposite party No. 1. Also heard Smt. P Das, learned Amicus Curiae for the informant/opposite party No. 2.

2) Apprehending his arrest, the petitioner, namely, **Lakshmi Nath Choudhury**, son of Late Purondor Choudhury, resident of House No.5 Trinayan Path, Beltola Tiniali, P.S.-Hatigaon, District-Kamrup (Metro) has filed this application under Section 439 Cr.P.C., praying for his bail in **Sessions (Special) Case No. 198/2024**, arising out of All Women Police Station Case No. 25/2024, registered under Section 354(A)(1)(i) of the IPC read with Sections 8/10 of the POCSO Act, 2012, corresponding to G.R. No. 3017/2024, in which, he was arrested on 26.05.2024 and is in custody since then.

3) It is submitted by Mr. A K Sarma, learned counsel for the petitioner that as, in the meantime, evidence of the informant/victim has already been recorded by the learned Special Judge (POCSO), Guwahati, and also considering the fact that the petitioner is 57 years old and is in custody, since 26.05.2024, the petitioner should be considered for his bail in said Sessions Special Case No. 198/2024.

4) Mr. B Sarma, learned Additional Public Prosecutor, Assam, by placing the provisions for consideration of bail before the Court, as being already passed by the Hon'ble Supreme Court in numerous cases; has submitted that the petitioner should not be released on bail as numbers of prosecution witnesses are yet to be examined in said Sessions Special Case No. 198/2024. Moreover, it will also be a threat to the victim/informant and the other witnesses of the case, if the petitioner is released on bail at this stage, while recording of evidence of prosecution witnesses is still going on.

5) Smt. P Das, learned Amicus Curiae for the informant/respondent No. 2, from the records submitted that the petitioner, i.e., the father of the informant/victim, even on earlier occasion, sexually assaulted the informant/victim while she was studying in class-VIII and on being opposed, the petitioner promised her not to repeat the same act ever again. However, he performed the same act again, when the minor victim girl came to stay

with him after joining her Higher Secondary classes, upon passing her matriculation exam.

6) Smt. P Das, learned Amicus Curiae, further submitted that if the petitioner is released on bail at this stage, it will be a threat to the informant/victim and hence, the petitioner is not entitled for his bail in said Sessions Special Case No. 198/2024.

7) Perused the case record that was called for by the Court vide order dated 25.10.2024.

8) It is seen from the case records that police has already seized the birth certificate of the minor victim girl and as per the said birth certificate, her date of birth is 08.05.2007 and as such, at the time of the incident, she was a minor girl of just 17 years of age.

9) It is also seen from the records that the mother of the minor victim girl expired three days after her birth and as such, the said minor victim girl was raised by her maternal grandfather, grandmother and her maternal uncles. The petitioner herein got remarried after the death of the victim's mother.

10) Case records also reveal that the informant/victim lodged the FIR on 24.05.2024 before the All Women Police Station, Panbazar alleging against her own father, i.e., the petitioner herein, that he approached her with a bad intention and sexually assaulted her during her stay with the petitioner on 23.05.2024 and 24.05.2024.

11) After completion of the investigation of the case, police filed the charge-sheet in said All Women P.S. Case No. 25/2024 on 20.06.2024.

12) The learned Special Judge (POCSO), Guwahati, on 04.07.2024, took cognizance of the offence under Section 354(A)(1)(i) of the IPC read with Sections 8/10 of the POCSO Act, 2012 against the petitioner in said All Women P.S. Case No. 25/2024 and the said All Women P.S. Case was accordingly registered as Sessions (Special) Case No. 198/2024.

13) The learned Special Judge (POCSO), Guwahati, by order dated 01.08.2024, framed charges against the petitioner under Sections 354/323 of the IPC read with Section 10 of the POCSO Act, 2012.

14) As per the charge-sheet filed in the case, there are seven prosecution witnesses and in the meantime, the evidence of the minor victim girl as PW-1, has already been

recorded by the learned Special Judge (POCSO), Guwahati; who was thoroughly cross-examined by the defence.

15) From the case records, it is seen that the complaint of the FIR which was written by the informant/victim herself, her statement recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate First Class, Kamrup (Metro), Guwahati on 27.05.2024 as well as her statement before the learned Special Judge (POCSO), Guwahati, recorded on 11.09.2024 are found to be the same and in all those, the minor victim girl implicated her own father, i.e. the petitioner herein, with regard to the illegal act committed by him upon her.

16) Considering the involvement of the petitioner in such a heinous crime with his own daughter and also considering the fact that the trial of the case is still progressing and some prosecution witnesses are yet to be examined, the Court is of the view that the detention of the petitioner, since 26.05.2024, cannot be considered for his bail in said Sessions (Special) Case No. 198/2024.

17) Accordingly, this bail application of the petitioner, **Lakshmi Nath Choudhury**, son of Late Purondor Choudhury, in said Sessions (Special) Case No. 198/2024, arising out of All Women P.S. Case No. 25/2024, presently pending before the Court of the learned Special Judge (POCSO), Guwahati stands rejected.

18) The Gauhati High Court Legal Services Committee shall pay the remuneration to Smt. Priyanki Das, learned Amicus Curiae, who appeared for the informant/respondent No.2 as being appointed by the Court and also assisted the Court in adjudicating this matter, on raising a bill by her.

JUDGE

Comparing Assistant