

GAHC010128242024



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

Case No. : Bail Appln./1880/2024

MD. MITUL ALI @ SANI
S/O MD. NURU ALI
PERMANENT RESIDENT OF VILL- BADULIPARA, P.S. BARAMA IN THE
BAKSA DISTRICT OF ASSAM

VERSUS

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

2:RASHIA BIBI
W/O SAIFUL ALI
PERMANENT RESIDENT OF VILLAGE-BAHULIPARA
P.S. BARAMA
IN THE BAKSA DISTRICT OF ASSA

Advocate for the Petitioner : MR A W AMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

29.07.2024

Heard Mr. S. Nawaz, learned counsel for the petitioner, namely, Md. Mitul Ali @ Sani, who has filed this application under Section 439 of the Cr.P.C., with prayer for bail, as he is behind bars since 23.09.2023 in connection with Special POCSO Case No.108/2023 arising

out of Barama P.S. Case No.102/2023 under Section 376(2)(I) of the IPC, read with Section 6 of the POCSO Act, pending in the Court of the learned Special Judge (POCSO), Baksa, Mushalpur.

Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1. The learned Additional P.P. has raised serious objection stating that the petitioner is not entitled to bail and he is booked under the serious offence prescribing life imprisonment for his entire life.

Also heard Mr. D.K. Agarwala, learned counsel for the respondent No.2.

I have considered the submissions at the Bar with circumspection.

It is submitted on behalf of the petitioner that the trial has not yet commenced. The charge was framed on 28.11.2023 and 19 dates have been fixed, but not a single witness has been examined so far. The petitioner is behind bars for 311 days. The Court of the learned Special Judge is lying vacant for the last 9 dates and this has protracted the trial. It is also submitted that no doubt the victim was only 15½ years at the time of the incident, but the statement of the victim under Section 161/164 Cr.P.C. clearly reveals that the victim was in a relationship with the petitioner, who is also a young lad of only 23 years of age. The victim is not physically disabled except that she is suffering from speech impediment as the victim stammers while speaking.

The statement of the victim prima facie reveals that the victim has given her statement and there is no record by the Magistrate or by the I.O. that the victim is a specially abled child.

It is further submitted that the petitioner's right to liberty has been curtailed as the petitioner is facing incarceration without trial.

I have considered the submission that the trial has not been progressed due to the fact that the Court is lying vacant for a prolonged period. I have also considered the submission that the petitioner is behind bars and several dates have been fixed, but not a single witness has been examined.

I have considered the peculiar facts and circumstances of this case. Considering all aspects, it appears that the petitioner can be granted bail. In view of my foregoing discussions, the bail application is allowed. The petitioner is enlarged on bail of ₹ 50,000/- with a suitable surety of like amount to the satisfaction of the Trial Court, under the conditions that -

- (i) the petitioner shall not tamper with the evidence and try to influence the witnesses;
- (ii) the petitioner shall not leave the jurisdiction of the Court without prior permission till completion of trial.
- (iii) the petitioner shall cooperate with the trial.

On breach of any of the bail conditions, the learned Trial Court is at liberty to cancel the bail.

Sd/- *Susmita Phukan Khaund*
JUDGE

Comparing Assistant