

GAHC010140942024



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

Case No. : Bail Appln./2144/2024

IMAN ALI
S/O LT. OMAR ALI, R/O BERUBARI, P.S.-PALTANBAZAR, DIST- KAMRUP
(M), ASSAM

VERSUS

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

2:AYESHA KHATUN
W/O ANOWAR HUSSAIN
VILL- OUDUBI PT.I
P.S.-JOGIGHOPA
DIST- BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate), MR. K H SAIKIA

Advocate for the Respondent : PP, ASSAM, MR. P SAIKIA, LEGAL AID COUNSEL R2

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06.09.2024

Heard Mr. K.K. Mahanta, learned Senior counsel assisted by Ms. S. Nazneen,
learned counsel for the accused. Also heard Mr. D.P. Goswami, learned Addl.

Public Prosecutor for the State respondent No. 1 and Mr. P. Saikia, learned Legal Aid counsel for the respondent No. 2.

2. This petition, under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 is preferred by the accused, namely, Iman Ali, who has been languishing in jail hazot in connection with Jogighopa P.S. Case No. 280/2023, under Section 363 of the IPC, added Section 344 of the IPC, read with Section 6 of the POCSO Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Ayesha Khatun on 21.11.2023. The essence of allegation made in the FIR dated 21.11.2023, is that one Afaj Uddin of Kataniapara, under Dhula P.S., Darrang district had circulated some vulgar photographs of her minor daughter, namely, Smt. X (name withheld), aged about 15 years in social media through the mobile of one Zakir Hussain and Hasen Ali and thereafter, Zakir Hussain and Hasen Ali circulated the photographs of her daughter in the mobile of different persons. Then, knowing about the photographs being made viral in the social media, her minor daughter went missing w.e.f. 18.11.2023, at about 10 a.m. from her house and she could not be traced out.

4. Mr. Mahanta, learned Senior counsel for the accused submits that this second bail application is preferred mainly on two grounds. Firstly, Mr. Mahanta submits that there is considerable delay in the trial. It is pointed out that after framing of charge against the accused; the case was posted for evidence. But, on as many as nine dates, the prosecution side has failed to produce any witness and till date not a single witness is examined. Secondly, Mr. Mahanta submits that the medical report of the victim girl had totally belied the prosecution version. Mere recovery of the victim girl from the possession of the

present accused is not sufficient to establish the charge under Section 6 of the POCSO Act, against him. Lastly, Mr. Mahanta submits that the accused was arrested on 03.01.2024, and since then he has been languishing in jail hazot for last 9 months, and that he will appear before the Court regularly and will face trial and therefore, it is contended to allow the petition.

5. On the other hand, Mr. D.P. Goswami, learned Addl. Public Prosecutor, referring to the materials available on record, especially to the statement of the victim girl recorded under Section 164, Cr.P.C., submits that she has implicated the accused in no uncertain term with the offence charged and that she has identified the accused in the Test Identification Parade conducted by the I.O. at the time of investigation. Further, Mr. Goswami submits that if without recording the evidence of the victim girl, bail is granted to the accused, then there is every possibility of tampering the witnesses and therefore, Mr. Goswami has contended not to grant bail to the accused till examination of the victim as well as the informant of this case.

6. Subscribing to the submission of Mr. Goswami, learned Additional Public Prosecutor, Mr. P. Saikia, learned Legal Aid counsel for the respondent No. 2 submits that there are sufficient materials against the accused and without examination of the victim girl, bail may not be granted to the accused at this stage.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned trial Court.

8. It appears that the investigation of the case has already been completed and charge-sheet has been submitted before the learned trial Court and the

learned trial Court had framed charge against the accused under Sections 363/344 of the IPC, read with Section 6 of the POCSO Act. It also appears that the case is now pending for examination of the witnesses and for last nine dates, the prosecution side has failed to produce any witnesses.

9. It is a fact that some delay is there in the examination of the prosecution witnesses. But at best, the same can be termed as systemic delay as held by Hon'ble Supreme Court in the case of *Abdul Rehman Antulay and Ors. vs. R.S. Nayak and Anr.*, reported in (1992) 1 SCC 225.

10. It is also apparent from the materials placed on record that the prosecution side has collected sufficient materials against the accused in support of the charges so framed.

11. There is, ofcourse, some substance in the submission of Mr. Mahanta, learned Senior Counsel for the accused that the medical report indicates no sign of injuries found on the person of the victim. But it is well settled in catena of decision of Hon'ble Supreme Court that there is no likelihood of physical injury if the victim was a women habituated to sexual intercourse. (See- *Fateh Chand vs. State of Haryana reported in AIR 2009 SC 2729*). Besides, medical evidence has to be appreciated in the light of ocular evidence. (See *Satyapal vs. State of Haryana reported in AIR 2009 SC 2190*). That being so, the submission of Mr. Mahanta is found to be devoid of substance and accordingly, the same stands repudiated.

12. It appears that the informant and victim are yet to be examined. That being so, the apprehension of tampering the witnesses so expressed by the learned Addl. P.P. cannot be said to be unfounded. If bail is granted to the accused at this stage, without examination of the victim girl and the informant, the same will cause prejudice to the prosecution side.

13. Further, it appears that the offences are serious in nature. In the event of conviction of the accused of the charge under Section 6 of the POCSO Act, this will entail punishment up to 20 years.

14. Having considered above and also the nature and gravity of the offence and the punishment prescribed for the same, and also considering the facts and circumstances on the record, this Court is of the view that this is not a fit case to grant bail to the accused at this stage, and accordingly the same stands dismissed.

15. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant