

GAHC010161242024



2024:GAU-AS:12113

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

Case No. : Bail Appln./2396/2024

SATYA DAS
S/O LATE ASHWINI DAS, R/O VILL- KACHUKATA, P.O. AND P.S.-
TAMULPUR, PIN-781367, DIST- TAMULPUR, ASSAM

VERSUS

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

2:(VICTIM)
D/O DHANESWAR KUMAR
R/O VILL- KACHUBARI
P.S.-TAMULPUR
PIN-781368
DIST- BAKSA
ASSA

Advocate for the Petitioner : MR. A PAUL,

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

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

ORDER

02-12-2024

Heard Mr. A Paul, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State. Also heard Ms. P Das, learned Amicus Curiae, for the informant victim, respondent No.2.

2. The petitioner, namely, **Satya Das**, son of Ashwini Das, resident of Village-Kachukata, P.O.-Salakati, Police Station-Tamulpur, District-Tamulpur has filed this application under Section 483 BNSS, 2023 praying for his release on bail in **Special POCSO Case No. 54/2024** arising out of Tamulpur Police Station Case No. 66/2024 under Sections 342/376 IPC, read with Section 4 of the POCSO Act, 2012, corresponding to GR No. 241/2024, in which he was arrested on 28.03.2024 and is in custody since then.

3. As per the FIR dated 27.03.2024 lodged by the victim complainant, the case is that few months prior to the lodging of the said complaint an aunt of her village came to their house asking for her as a bride of an elder brother of the said aunt. But, as she was not of marriageable age, her parents and she herself, asked her aunt not to bring the said elder brother of the aunt to them. In spite of such request, the said aunt sometimes in the month of July of the previous year, brought the said brother of the aunt and at the time of leaving their house, the said aunt gave the mobile number of the complainant to aunt's elder brother asking him to make phone calls to the complainant. As he used to make phone calls frequently, occasionally the complainant used to talk with him. On 25.03.2024 by sending message the complainant informed the petitioner that she will not marry him and asked him to look for another bride somewhere else. After receiving the said message, the petitioner called the complainant in her mobile that was received by her elder sister and the petitioner asked her who had sent the said message. On being asked by her elder sister, the complainant said that it is she who had sent the said message. The petitioner immediately dropped the call. After sometime, the family members of the

petitioner came to the house of the complainant and told her as well as her family members that on receiving the said message, the petitioner left his house saying that he is going to die. As such, the family members of the petitioner requested the complainant to go with them. Because of such compulsion, the complainant was taken to the house of the petitioner and on coming to know about it the petitioner returned home. Then he put vermilion in the head complainant in the presence of his family members and confined her in his house for two days. During her confinement in the house of the petitioner, in those two days, he had forcefully committed physical relation with her inspite of her objection and resistance. That on 27.03.2024, when she came to Tamulpur Higher Secondary School to appear in her Higher Secondary Examination, after completing exam, she being helpless, informed the Principal of the said Higher Secondary School about her miseries and to save her. After sometime, police came and brought her to the Tamulpur Police Station along with her parents and the petitioner. Accordingly, she lodged the FIR on 27.03.2024 requesting the Officer-in-Charge of Tamulpur Police Station to enquire into the matter and to do justice to her.

4. Accordingly, the said FIR of the victim informant, respondent No.2 was registered as Tamulpur Police Station Case No. 66/2024 on 27.03.2024 itself corresponding to G.R. No. 241/2024.

5. After registering the case, the petitioner was taken into the custody and was arrested on 27.03.2024.

6. Mr Paul, learned counsel appearing for the petitioner placing the medical report of the victim dated 28.03.2024 submitted that from the same nothing incrementing was found against the petitioner in support of the allegation of sexual assault made against him by the victim informant. He stated that the petitioner has been falsely implicated in a fabricated case and for no reason he is languishing in the jail since 28.03.2024.

7. Mr Paul, learned counsel for the petitioner submitted that chargesheet in the case has already been filed and that the trial of the case though initially progressed smoothly, but after transfer of the POCSO Judge from the Baksa Court, it did not progress further.

8. It is also submitted by Mr Paul, learned counsel, on behalf of the petitioner that the learned Special Court have already examined and recorded the evidence of the victim informant, who was also thoroughly cross examined by the defence, who is the vital witness of the case. Considering the number of witnesses mentioned in the chargesheet of the case and in absence of the learned Special Judge, recording of other prosecution witnesses will definitely take some time and the trial of the case is likely to be delayed. As such, according to Mr. Paul, further custodial detention of the petitioner in the case is not warranted and the petitioner should be released on bail.

9. It is also submitted by Mr Paul that petitioner is ready to face the trial and till completion of the trial of the case the court should consider to release the petitioner on regular bail in the case on any terms and conditions that may be imposed upon him while considering his bail.

10. Mr Paul, learned counsel for the petitioner further submitted that the FIR of the case, the chargesheet filed in the case and the medical report of the victim informant do not attract the provisions of Sections 342/376 of the IPC as well as Section 4 of the POCSO Act against him. For all such reasons, Mr Paul, learned counsel, submitted that the petitioner should be released on bail in said Special POCSO Case No. 54/2024 pending before the Court of learned Special Judge (POCSO), Baksa at Mushalpur.

11. Mr. B Sarma, learned Additional Public Prosecutor, Assam submitted that after considering the materials in the case record, the case diary, Section 164 CrPC statement of the victim informant recorded on 28.03.2024 and the chargesheet filed in the case, the learned Special Judge (POCSO), Baksa, Mushalpur on 01.06.2024 framed charge under sections 366/342/376(1) IPC read with Section 4 of the POCSO Act.

12. Mr. Sarma, learned Additional Public Prosecutor also submitted that the victim informant was minor at the time of the incident whereas the accused petitioner was of 27 years old. From the chargesheet Mr Sharma submitted that evidence of 8 more prosecution witnesses are yet to be recorded. At this stage, if the accused petitioner is released on bail, Mr. Sarma, submitted that there is all probability that the accused

petitioner shall influence the other prosecution witnesses by making inducement, threat or promise and thereby shall hamper and tamper with the evidence of the case. As such, Mr Sarma prays for rejection of this bail application of the petitioner.

13. Ms. P Das, learned Amicus Curiae, for the informant victim, respondent No.2 also prays for rejection of bail of the petitioner in the case stating that the victim was minor at the time of the incident whereas the accused petitioner was of 27 years old. On releasing the petitioner on bail there is all probability that he shall threaten the informant victim as well as other prosecution witnesses who are yet to be examined and evidence are yet to be recorded.

14. Perused the records of the case that was called for by order dated 13.08.2024. It is seen from the records of the case that as per the Admit Card issued to her by the Secondary Education Board of Assam, the Date of Birth of the victim girl was 25.10.2006, thereby the victim was about 17 years 5 months at the time of the incident, as such she was a minor. On the other hand, the Date of Birth of the accused petitioner was 15.04.1993 and on the date of the incident he was more than 30 years 11 months.

15. Perused the evidence of the victim informant PW.1 recorded by the learned Special Judge(POCSO) on 15.06.2024 during which she was thoroughly cross examined by the defence. Also perused the statement of the said victim informant recorded by the learned Judicial Magistrate First Class, Baksa, Mushalpur on 28.03.2024 under Section 164 CrPC. It is seen that her statement and evidence are intact. Moreover, evidence of some of the Prosecution Witnesses are yet to be recorded.

16. Considering the materials in the case record, the court is of the opinion that detention of the petitioner since 28.03.2024 cannot be considered for his bail in said Special POCSO Case No. 54/2024 arising out of Tamulpur Police Station Case No. 66/2024 at this stage.

17. Accordingly, this bail application of the petitioner, **Satya Das**, son of Ashwini Das in **Special POCSO Case No. 54/2024** arising out of Tamulpur P.S. Case No. 66/2024 pending before the Court of learned Special Judge(POCSO), Baksa, Mushalpur stands

rejected.

18. The Gauhati High Court Legal Services Authority shall pay the remuneration to Ms. Priyanki Das, learned Amicus Curiae in assisting the Court, appearing for the victim informant respondent No.2, on raising a Bill.

JUDGE

Comparing Assistant