

GAHC010165552024



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

Case No. : Bail Appln./2446/2024

DULU MIRDHA
S/O LATE PUNYA MIRDHA, R/O DIHINGMUKH TETELIGURI, P.S.-DEMOW,
P.O.-DIHINGMUKH, DIST- SIVASAGAR, ASSAM, PIN-785671

VERSUS

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

2: BABUL MALLAH
S/O SHRI KEDAR MALLAH
R/O DIHINGMUKH TETELIGURI
P.S.-DEMOW
P.O.-DIHINGMUKH
DIST- SIVASAGAR
ASSAM
PIN-78567

Advocate for the Petitioner : MR. P D NAIR, MR S R A NASER, MR. H ROHMAN, MR G ALAM
Advocate for the Respondent : PP, ASSAM, AMICUS CURIAE

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

15.10.2024

Heard Mr. H. Rohman, learned counsel appearing for the accused petitioner. Also heard Mr. K. K. Das, learned Addl. P.P., Assam appearing for the

State respondent No.1 and Ms. P. Agarwal, learned Amicus Curiae appearing for respondent No.2.

2. By filing this petition under Section 439 of the Cr. P. C., 2023 the accused-petitioner, namely, **Dulu Mirdha**, has prayed for grant of bail in connection with **Demow P.S. Case No.09/2024** under Sections **366/376(1) of the IPC read with Section 6 of POCSO Act and corresponding Special (P) Case No. 15/2024.**

3. It is submitted by the learned counsel for the petitioner that as per medical report the victim was above 18 years of age at the time of the incident. Hence, the provision of Section 6 of POCSO Act is not attracted here in this case. It is further submitted that the victim in her statement recorded under Section 164 Cr.P.C. has stated that she has voluntarily eloped with the accused petitioner and had sexual relationship when she stayed along with the petitioner. Being a major girl, the victim is a consenting party to have sexual relationship with the petitioner. It is also submitted that the evidence of the victim was recorded by the trial court and the accused petitioner has been languishing in judicial custody for more than six months since his arrest on 07.04.2024. Considering the length of detention, prayer for bail may be considered.

4. Mr. Das, learned Additional Public Prosecutor and Ms. Agarwal learned Amicus Curiae have vehemently opposed in granting bail to the petitioner by stating that the victim is a minor girl and the victim was around 17 years of age at the time of the alleged incident.

5. I have heard the learned counsel for both the parties and I have also perused the evidence of the witnesses. It appears that three witnesses have been examined by the trial court including the victim.

6. In view of the above and considering the fact that the victim has already been examined, this Court is inclined to grant bail to the petitioner.

7. Accordingly, the petitioner, named above, shall be released on bail, on furnishing bail bond of **Rs.50,000/-** with **two suitable sureties** of the like amount, to the satisfaction of learned **Special Judge (POSCO), Sivasagar**.

8. The direction for bail is further subject to the following condition that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of the learned trial court without prior written permission from him/her till disposal of the case.

9. **Special Judge (POSCO), Sivasagar**, is at liberty to impose any other condition(s) as it deems fit and proper at the time of releasing the accused/petitioner on bail to procure his attendance during trial.

10. The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

11. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant