

GAHC010172992024



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

Case No. : Bail Appln./2558/2024

MD. HAMIDUL ISLAM
S/O MD. KASEM ALI, R/O VILL- GAROKHUTA, P.O.-CHOIBARI BAGAN, P.S.
AND DIST- KOKRAJHAR (ASSAM)

VERSUS

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

2:GUL MANJAN ALI
S/O JEL HOQUE
VILL- SILKATARI PT-I
P.O.-BILASHPUR
P.S. AND DIST-KOKRAJHA

Advocate for the Petitioner : MR. K M HASSAN, MS. S NAZNEEN

Advocate for the Respondent : PP, ASSAM, MR D K BHATTACHARYYA, AMICUS CURIAE

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 01.10.2024

Heard Mr. K.M. Hassan, learned counsel for the petitioner. Also heard Mr.

K.K. Parasar, learned Additional Public Prosecutor for the State/respondent No.1 and Mr. D.K. Bhattacharyya, learned *Amicus Curiae* for the respondent No. 2.

2. By this application filed under section 483 of the Bharatiya Nagarik Suraskha Sanhita, 2023, the accused petitioner namely, **Md. Hamidul islam**, has prayed for bail in connection with Basugaon P.S. Case No. 21/24 under Section 420/354/376/325/506/294/34 IPC r/w Section 4 of POCSO Act (corresponding to Kokrajhar P.S. Case No. 107/2024) under Section 420/354/376/325/506/294/34 IPC r/w Section 4 of POCSO Act.

3. The learned counsel for the petitioner submits that whatever stated by the informant in the FIR is false and concocted. The petitioner and the victim girl had a love relationship and she voluntarily left her house with an intention to stay with the petitioner. It is also submitted that when the learned trial court took cognizance of the complaint petition filed by the informant under Section 156(3) Cr.P.C. and forwarded the said petition to the Officer-in-Charge, Kokrajhar police station who registered a case and has failed to comply with the judgment passed by the Hon'ble Apex Court in Priyanak Srivastava & Anr. v. State of Uttar Pradesh, reported in (2015) 6 SCC 287. Considering the background of the case, the petitioner may be enlarged on bail.

4. On the other hand, Mr. Parasar, learned Additional Public Prosecutor has produced the case diary along with the statement of the victim girl recorded under Section 164 Cr.P.C. It is submitted by the learned Additional Public Prosecutor that the victim is a minor girl and she has implicated the petitioner. Hence, he has opposed in granting bail to the petitioner.

5. Mr. Bhattacharyya, learned *Amicus Curiae* for the respondent No.2 has also submitted that the petitioner had committed such nuisance to the victim girl. He has strongly opposed in granting bail to the petitioner.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

7. It appears from the statement of the victim girl recorded under Section 164 Cr.P.C. that on several occasions, the victim had been sexually abused by the petitioner. Admittedly, the victim is a minor girl as such question of consent does not arise. Regarding non-compliance of the provision of Section 156(3) Cr.P.C., the petitioner can raise the issue during trial, and which cannot be taken into consideration at the stage of bail.

8. Considering the materials available in the case diary as well as the statement of the victim girl, this Court is not inclined to grant bail to the petitioner at this stage. Therefore, prayer for the bail is rejected.

9. The bail application stands disposed of accordingly.

10. Return the case diary.

JUDGE

Comparing Assistant