

GAHC010176652024



2024:GAU-AS:12438

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

Case No. : Bail Appln./2581/2024

ANOWAR ALI
S/O LATE HANIF ALI
RESIDENT OF PUB KALDOBA PART III, PS GOLOKGANJ, DIST
KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:SHAHIDUL SHEIKH
S/O SHAHALAM SHEIKH

RESIDENT OF VILLAGE JOYPUR NAMAPARA
PS AND DIST KOKRAJHAR
ASSA

Advocate for the Petitioner : N. UDDIN, MS. P AHMED, MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM, MR. M ALI (R-2)

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

09/12/2024

Heard Mr. M I Hussain, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State respondent. Also heard Mr. M Ali, learned counsel for the informant/opposite party No. 2.

2. Petitioner, namely, **Anowar Ali**, son of Late Hanif Ali, resident of Village-Pub Kaldoba Part-III, Police Station-Golakganj, District-Kokrajhar, a charge-sheeted accused has filed this application under Section 483 BNSS seeking regular bail in Special (POCSO) Case No. 115/2024 arising out of Kokrajhar Police Station Case No. 374/2023 under Sections 363/368 IPC read with Section 6 of the POCSO Act corresponding to G.R. No. 779/2023, wherein he was arrested on 27.03.2024 and is in custody since then.

3. Considering his detention since 27.03.2024 and as charge has already been framed against him, the petitioner has prayed for his bail in said Special (POCSO) Case No. 115/2024.

4. It is also submitted by the petitioner that evidence of the minor victim girl, PW-1 as well as the evidence of the informant/complainant of the case, PW-2, i.e., father of the minor victim girl have already been recorded by the learned Trial Court and the defence has also thoroughly cross-examined both of them. As such, the petitioner submitted that he can be considered for his bail in said Special (POCSO) Case No. 115/2024 arising out of Kokrajhar P.S. Case No. 374/2023.

5. It is submitted by the petitioner that he shall comply with any such terms and conditions that may be imposed upon him by the Court while considering his bail in said Special (POCSO) Case No. 115/2024 arising out of Kokrajhar P.S. Case No. 374/2023.

6. In support of bail of the petitioner, Mr. Hussain, learned counsel for the petitioner stated that he is not a shady character and there is no case on record that he was earlier involved in any illegal activity. Mr. Hussain also stated that human dignity is required to be adopted by Court while dealing with an application relating to bail as the grant of bail is the rule and refusal is the exception.

7. In that regard, Mr. Hussain placed reliance in the decision of the Hon'ble Supreme Court in the case of *Dataram Singh Vs. State of Uttar Pradesh and Another* reported in (2018) 3 SCC 22 as well as a decision of the Co-ordinate Bench of this Court in Bail Appln. No. 1621/2024 decided on 18.06.2024 (Kapil Roy Vs. State of Assam and Another).

8. Mr. Ali, learned counsel for the informant/opposite party No. 2 submitted that the informant of said Kokrajhar P.S. Case No 374/2023, i.e., father of the minor victim girl on 17.09.2024 had sworn an affidavit stating that he has no objection if the Court allows the petitioner to go on bail in said Kokrajhar P.S. Case No 374/2023 as in the meanwhile, they have already amicably settled the disputes with the help of local leading persons of their village in a village level meeting.

9. By order dated 30.08.2024, the Court called for the scanned copy of the records of Special (POCSO) Case No. 115/2024 along with the copy of the case diary of Kokrajhar P.S. Case No. 374/2023 from the Court of learned Special Judge (POCSO), Kokrajhar.

10. As per the FIR dated 05.11.2023 lodged by the informant/opposite party No.2, the case is that his minor daughter aged about 15 years was a student of Class-IX at Kokrajhar Girls' Higher Secondary School. On 03.11.2023 in the morning around 8:00 AM, she left her home in school dress saying that she would be going to the school. But as she did not return home from school on time, the informant/opposite party No.2 suspected that the petitioner had induced his minor daughter and kidnapped her from the road and confined her somewhere else. As he was in search of his daughter there was a delay in lodging the FIR. By the said FIR, the informant requested the Police authority to enquire into the matter and to do the needful in recovering his minor daughter and oblige. Said FIR dated 05.11.2023 was registered as Kokrajhar P.S. Case No. 374/2023 under Sections 363/368 IPC.

11. Later, after the minor victim girl was traced out, her statement under Section 164 Cr.P.C. was recorded on 13.03.2024 by the learned Sub-Divisional Judicial Magistrate (Sadar), Kokrajhar. Further, her statement was also recorded by police under Section 161 Cr.P.C. After her such recovery, said minor victim girl was also medically examined.

12. On finding about the physical relation of the petitioner with the minor victim girl during her stay with the petitioner and on seizing the birth certificate of the said victim, where her date of birth is recorded as 18.09.2014, the Investigating Officer of the case on 27.03.2024 prayed before the learned Chief Judicial Magistrate, Kokrajhar for adding of Section 376(3) IPC read with Section 6 of the POCSO Act, 2012 in said Kokrajhar P.S. Case No. 374/2023.

13. On perusal of the case records, the learned Chief Judicial Magistrate, Kokrajhar by order dated 27.03.2024 allowed to add Section 376(3) IPC read with Section 6 of the POCSO Act, 2012 in said Kokrajhar P.S. Case No. 374/2023. After completion of investigation of the case, charge-sheet in said Kokrajhar P.S. Case No. 374/2023 was filed on 24.04.2024 vide Charge-Sheet No. 68/2024 under Sections 363/368 IPC with added Section 376(3) IPC read with Section 6 of the POCSO Act, 2012 against the petitioner with 9 nos. of prosecution witnesses on it.

14. From the perusal of Section 164 Cr.P.C. statement of the minor victim girl recorded on 13.03.2024 by the learned SDJM (S), Kokrajhar as well as in her evidence recorded by the learned Special Judge (POCSO), Kokrajhar, it is seen that the minor victim girl has implicated the petitioner

stating that during November, 2023 in the morning accused, petitioner herein, brought her to Kokrajhar town with a pretext of showing football match and thereafter, he took her to Bongaigaon by train and from Bongaigaon he took her to Zero, Arunachal Pradesh where she was kept by the petitioner for a month in a rented house and during her stay at Zero the accused petitioner committed rape on her on several occasions. Thereafter, the petitioner took her to Hyderabad where she was kept in a rented house for one month where too he raped her. Subsequent to that the petitioner took her to Delhi and kept her there for one month and raped her again. Then he took her to Old Delhi and kept there for one month and raped her. After that the petitioner brought her back and took her to his house and that from his residence police rescued her.

15. It is seen from the case records that the date of birth of the victim girl is 01.06.2008. As such, at the time of the offence from November, 2023 to March, 2024, the said victim was about 15 years 5 months to 15 years 9 months, whereas the petitioner was of 37 years old.

16. Considering the involvement of the petitioner being a person of 37 years old in a heinous crime of committing rape on a minor girl of 15 years old and as the trial of said Special (POCSO) Case No. 115/2024 pending before the Court of learned Special Judge (POCSO), Kokrajhar is progressing, the Court is of the opinion that his detention since 27.03.2024 cannot be considered for his in the said Special (POCSO) Case No. 115/2024

17. Accordingly, this bail application of the petitioner, **Anowar Ali**, son of Late Hanif Ali, in Special (POCSO) Case No. 115/2024 arising out of Kokrajhar Police Station Case No. 374/2023 pending before the Court of learned Special Judge (POCSO), Kokrajhar stands rejected.

JUDGE

Comparing Assistant