

GAHC010184522024



2024:GAU-AS:12435

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

Case No. : Bail Appln./2713/2024

MOSTAB ALI
S/O HUSSAIN ALI, R/O BHOGPUR, P.S GOREWAR, DISTRICT TAMULPUR,
ASSAM

VERSUS

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

2:ANOWAR HUSSAIN (INFORMANT)
S/O MAHIB ALI
R/O BHOGPUR
P.S.-GORESWAR
DIST- TAMULPUR
ASSA

Advocate for the Petitioner : MR. C K NATH, MR. AJAY SARMA, MR. S MUNIR
Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09/12/2024

Heard Mr. S Munir, learned counsel for the petitioner and Mr. K K Parashar, learned Additional Public Prosecutor, Assam for the State.

2. Petitioner, namely, **Mostab Ali**, son of Hussain Ali, resident of Bhogpur, Police Station-

Goreswar, District-Tamulpur, has filed this application under Section 483 BNSS, 2023, praying for his bail in **Goreswar Police Station Case No. 50/2024** registered under Section 64(2) BNS, 2023 read with Section 6 of the POCSO Act, 2012, corresponding to G.R. No. 705/2024, in which he was arrested on 27.08.2024 and is in custody since then.

3. Petitioner is the FIR named accused. As per the FIR dated 28.08.2024 lodged by the Informant/Opposite Party No.2, before the Officer-in-Charge of Goreswar Police Station, the case is that the petitioner called informant's minor daughter of 13 years old to his house to help him in cleaning the utensils. After completion of such cleaning, petitioner gave an ORS and an apple to the minor daughter of the informant. Then the petitioner laid Informants minor daughter on his bed and committed bad work. The informant also stated that even on last 22nd and 23rd of August, 2024, the petitioner raped his said minor daughter. By the said written FIR, the informant requested the authority concerned to enquire into the matter and to take appropriate legal action on the petitioner.

4. Said FIR was accordingly registered as Goreswar Police Station Case No. 50/2024 under Section 64(2) BNS, 2023 read with Section 6 of the POCSO Act, 2012.

5. In the said Goreswar P.S. Case No. 50/2024, the petitioner was arrested on 27.08.2024 and was produced before the learned Special Judge (POCSO), Baksa at Mushalpur on 27.08.2024 itself.

6. Mr. Munir, learned counsel for the petitioner submitted that police after completion of investigation of the case on 26.11.2024 submitted the charge sheet in said Goreswar P.S. Case No. 50/2024 against the petitioner.

7. Mr. Munir, learned counsel also stated that though in the first page of said charge-sheet filed in the Goreswar P.S. Case No. 50/2024, the date is mentioned as 23.11.2024, however in the last page of the said charge-sheet under the signature of the authority concerned, it is specifically mentioned as 26.11.2024.

8. Mr. Munir, learned counsel further stated that 23.11.2024 being fourth Saturday, all officers in the State including the Court of learned Special Judge (POCSO), Baksa, Mushalpur was closed and therefore, it was not possible for the State to file the said chargesheet in Goreswar P.S. Case No. 50/2024 before the Court on 23.11.2024.

9. Mr. Munir, learned counsel for the petitioner went ahead and submitted that the said chargesheet in Goreswar P.S. Case No. 50/2024 was placed before the Court of learned Special Judge (POCSO), Baksa, Mushalpur; whereas the petitioner on 24.11.2024 itself has completed the statutory/mandatory period of detention of 90 days from his first remand since 27.08.2024.

10. Mr. Munir, learned counsel therefore submitted that the petitioner is entitled for his default bail in said Goreswar P.S. Case No. 50/2024.

11. Mr. Parashar, learned Additional Public Prosecutor, appearing for the State on verification submitted that the chargesheet in said Goreswar P.S. Case No. 50/2024 was of 26.11.2024.

12. By order dated 04.12.2024, the Court called for the scanned copy of the records of said Goreswar P.S. Case No. 50/2024 from the Court of learned Special Judge (POCSO), Baksa, Mushalpur.

13. On verification of the records, it is seen that in the first page of the chargesheet filed in said Goreswar P.S. Case No. 50/2024, the date 23.11.2024 is mentioned and in its last page under the signature of the concerned Investigating Officer of the case, the date 26.11.2024 is noted. From the record it is also seen that the said chargesheet of Goreswar P.S. Case No. 50/2024 was placed before the Court of learned Special Judge (POCSO), Baksa, Mushalpur on 28.11.2024 and on the said date itself the learned Special Judge (POCSO), Baksa, Mushalpur Court took cognizance of offence under Section 64(2) BNS, 2023 read with Section 6 of the POCSO Act, 2012 against the petitioner, directing to register the said Goreswar P.S. Case as Special POCSO Case. Accordingly, said Goreswar P.S. Case No. 50/2024 was registered as Special POCSO Case No. 112/2024.

14. On being enquired, it is placed before the Court that the Court of Special Judge (POCSO) at Baksa is presently vacant and that the chargesheet of said Goreswar P.S. Case No. 50/2024 was placed before the learned Sessions Judge, Baksa on 28.11.2024 during which the said authority made the remark on it as "seen" and round seal of the said office was put therein. It is also informed that on the same day itself, i.e., on 28.11.2024 cognizance of said Goreswar P.S. Case No. 50/2024 was taken by the learned Sessions Judge,

Baksa.

15. On the basis of the above, from 27.08.2024, till 28.11.2024, it is seen that the petitioner completed 94 days in custody and thereby he has already completed the statutory/mandatory period of his detention in said Goreswar P.S. Case No. 50/2024 prior to filing of the charge sheet in the case.

16. As such, due to non-filing of the charge-sheet within the statutory period as prescribed under the Law in force, the petitioner is entitled for his default bail in said Special POCSO Case No. 112/2024 arising out of Goreswar P.S. Case No. 50/2024, now pending before the learned Special Judge (POCSO), Baksa, Mushalpur.

17. Accordingly, the petitioner, namely, **Mostab Ali**, son of Hussain Ali, is granted default bail in said **Special POCSO Case No. 112/2024** arising out of **Goreswar Police Station Case No. 50/2024**, on furnishing a bail bond of Rs.50,000/- with 2 (two) local sureties, each of the like amount, one of which shall be a Government Employee, either Central or State Government, to the satisfaction of the learned Special Judge (POCSO), Baksa, Mushalpur, on conditions that the petitioner —

(i) shall appear before the learned Special Judge (POCSO), Baksa, Mushalpur in said Special POCSO Case No. 112/2024 arising out of Goreswar Police Station Case No. 50/2024 every Thursday for the next four English Calendar months commencing from 19.12.2024 and also on the dates as when the said Special POCSO Case No. 112/2024 is fixed before the said Court and further, whenever his presence is required in the said case;

(ii) shall not leave the territorial jurisdiction of the learned Special Judge (POCSO), Baksa, Mushalpur, without obtaining prior written permission from the said authority;

(iii) shall not hamper with the investigation, or tamper with the evidence of the case;

(iv) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer;

(v) shall not indulge himself in any criminal activities in future;

(vi) shall surrender his passport, if any, before the learned Special Judge (POCSO), Baksa, Mushalpur on or before 19.12.2024, obtaining necessary acknowledgment in that regard and

(vii) shall not induce, threat or commit any crime with the victim girl and/or the informant and/or any of their family members by himself or by any one from his family or by anyone acting on his behalf or his family,

failing which, the bail granted to him in said Special POCSO Case No. 112/2024 arising out of Goreswar Police Station Case No. 50/2024 pending before the Court of learned Special Judge (POCSO), Baksa, Mushalpur shall stand automatically vacated.

18. This bail application accordingly stands disposed of with the above directions.

JUDGE

Comparing Assistant