

GAHC010184582024



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

Case No. : Bail Appln./2737/2024

MD. ISMAIL HOQUE
S/O MD. ABU BAKKAR SIDDIK, VILL- BARALIMARI (SUTIRPAR), P.S.-
BHURAGAON, DIST- MORIGAON, ASSAM

VERSUS

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

2:SAFIYA KHATUN
W/O MD. MAJUDDIN
VILL- CHATIHARA
P.S.-SHYAMPUR
DIST- DARRANG
ASSAM

Advocate for the Petitioner : MR. S K ROY, MR. N. ISLAM, MD K RAHMAN

Advocate for the Respondent : PP, ASSAM, N. UDDIN (R-2)

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 26.09.2024

- 1.** Heard Md. K. Rahman, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State as well as Mr. N. Uddin, learned counsel appearing for the respondent No. 2.
- 2.** This application under Section 483 of the BNSS, 2023 has been filed by the petitioner, namely *Md. Ismail Hoque* who has been detained behind the bars

since 15.06.2024 in connection with Special (P) Case No. 77/2024 arising out of Shyampur P.S. Case No. 09/2024 under Sections 366/376(3) of the Indian Penal Code read with Section 6 of the POCSO Act, 2012.

3. The gist of accusation in this case is that on 14.06.2024, the mother of the victim girl lodged an FIR before the Officer-in-Charge of Shyampur Police Station, *inter alia*, alleging that about one month prior to filing of the FIR, her minor daughter was found missing from her house and on 12.06.2024 she was recovered from the house of the accused named in the FIR (present petitioner). It is also alleged in the FIR that the victim was kidnapped by the petitioner and was kept in his house and she was subjected to forceful sexual intercourse against the will of the daughter of the first informant.

4. The learned counsel for the petitioner has submitted that the petitioner has been detained behind the bars since 15.06.2024 and considering the period of detention he may be allowed to go on bail. He has also submitted that there was a love affair between the petitioner and the victim girl. He has submitted that the petitioner would cooperate in his trial and, therefore, he may be allowed to go on bail.

5. The learned counsel for the informant, who is the mother of the victim has also not opposed the grant of bail to the petitioner on the ground that the mother came to know that there was a love affair between the petitioner and her daughter.

6. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the petitioner on the ground that the victim girl was aged about 16 years only at the time when the alleged offence was committed. He also submits that in her statement recorded under Section 164 of the Code of

Criminal Procedure, 1973, the victim has stated that she was forcefully subjected to physical intercourse by the present petitioner on the pretext of marrying her later on.

7. I have considered the submissions made by the learned counsel for both the sides and have also gone through the materials available on record including the scanned copy of the record of the Trial Court.

8. It appears that the charges under Sections 366/376(3)/344 read with Section 6 of the POCSO Act, 2012 have been framed against the present petitioner on 18.09.2024 and the next date is fixed on 03.10.2024 for evidence of the prosecution witnesses.

9. Though, the learned counsel for the respondent No. 2 as well as the learned counsel for the petitioner has submitted that there was a love affair between the victim and the petitioner, however, considering the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 as well as considering the fact that the next date before the Trial Court is fixed for recording of evidence of prosecution witnesses, this Court is not inclined to grant bail at this stage.

10. The prayer for bail is, therefore, rejected.

11. However, it is hereby observed that the petitioner may approach the Trial Court after recording of the evidence of the victim girl by the Trial Court and may pray for bail at that stage and on such an application being made, the Court shall consider the same as per law.

12. This bail application is accordingly disposed of.

JUDGE

Comparing Assistant