

GAHC010187242024



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

Case No. : Bail Appln./2741/2024

ZINNATUL ISLAM
S/O LATE NURUL ISLAM, R/O VILL- WNO-3 MURARA, P.S.-RANGIA, DIST-
KAMRUP, ASSAM

VERSUS

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

2:BANDANA KALITA
W/O DIMBESWAR KALITA
R/O VILL- LASI BISHNUPUR
P.S.-KAYAN
DIST- KAMRUP
ASSAM
PIN-78138

Advocate for the Petitioner : MR. A CHAUDHURY, MR. S HAQUE, MR. N MAHAJAN, MR. D BORA, MR. P K DAS

Advocate for the Respondent : PP, ASSAM, DR. P AGARWAL, AMICUS CURIAE

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 04.10.2024

Heard Mr. B.K. Mahajan, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State and Dr. P. Agarwal, 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, **Zinnatul Islam**, has prayed for bail in connection with **Kayan P.S. Case No. 41/2024** under Section 354-A(2) of IPC r/w Section 8/12 of POCSO Act, 2012.

3. It has been submitted by the learned counsel for the petitioner that the petitioner is a Head Master in 203 No. Lachi Bishnupur L.P. School, Kamrup. It is also submitted that the FIR was lodged after 44 days of the incident and there is no explanation to that effect. The petitioner has been detained in custody since 01.09.2024. He has already been suspended from his service. According to the learned counsel for the petitioner, a notice under Section 35(3) of BNSS, 2023 (corresponding to Section 41(A) Cr.P.C.) is required to be served to the petitioner as per guidelines laid down by the Hon'ble Supreme Court. However, no such notice was issued to the petitioner.

4. The learned counsel for the petitioner has also submitted that the petitioner is suffering from various ailments and presently he is under constant medication. Considering the health condition as well as non-compliance with the provision of Section 35(3) of BNSS, the petitioner may be enlarged on bail.

In support of his submission, the learned counsel for the petitioner has

referred a Bail Application vide BA No. 3014/2022.

5. Mr. Goswami, learned Additional Public Prosecutor for the State and Dr. Agarwal, learned *Amicus Curiae* for the respondent No. 2 have categorically submit that the victim girl stated in her statement recorded under Section 183 BNSS (164 Cr.P.C.) that the accused/petitioner inappropriately touched her belly and they have also raised strong objection in granting bail to the petitioner. The learned Additional Public Prosecutor also submits that there is no reflection in the case diary that notice under Section 35(3) of BNSS was issued against the petitioner.

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

7. In the case of ***Santender Kumar Antil v. Central Bureau of Investigation & Anr.*** reported in ***2022 LiveLaw (SC) 577***, the Hon'ble Supreme Court held that-

“b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41 A of the Code and the directions issued by this Court in Arnes Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.”

8. In the light of the allegations in the FIR, the maximum punishment being five years with fine for the offence under Section 8/12 of POCSO Act, it is essential that a notice under Section 35(3) BNSS be served to the petitioner. The Additional Public Prosecutor has confirmed that no such notice has been issued to the petitioner. In view of the above, this Court is inclined to grant bail to the petitioner.

9. Accordingly, the petitioner, named above, shall be released on bail in connection with **Kayan P.S. Case No. 41/2024** under Section 354-A(2) of IPC r/w Section 8/12 of POCSO Act, on furnishing bail bond of **Rs.50,000/- with two suitable sureties** of the like amount to the satisfaction of learned Special Judge, Rangia, Kamrup, Assam.

10. The direction for bail is further subject to the conditions that the petitioner:

(a) shall not leave the territorial jurisdiction of learned Special Judge, Rangia, Kamrup, Assam without prior written permission from him/her;

(b) 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 him from disclosing such facts to the Court or to any police officer;

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

(d) shall appear before the Investigating Police Officer once in a week for six weeks after his release on bail as and when called upon by the

Investigating Police Officer till the investigation of the case is completed.

11. Breach of any of the above conditions, shall tantamount to cancellation of bail.
12. In the view of the above, the bail application stands disposed of.
13. Send back the case diary.

JUDGE

Comparing Assistant