

GAHC010187642024



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

Case No. : Bail Appln./2765/2024

SHIVA KHAKHLARY
S/O TORANI KHAKHLARY, R/O BELGURI, JAGIROAD, P.S.-JAGIROAD, DIST-
MARIGAON, ASSAM, INDIA

VERSUS

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

2:MD FOYJU ALI @ FOYJUDDIN
S/O LATE WALI SHEKH
R/O KATAHBARI
NO. 2 MAZID PATH
P.S.-GARCHUK
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. P BOIRAGI, MR G G GOGOI, MRS. B TALUKDAR, MR. S J SARMAH

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

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

20-11-2024

Heard Mr. G.G. Gogoi, learned counsel for the petitioner and Ms. S.H. Bora, learned Additional Public Prosecutor, Assam for the State. Also heard Mr. S. K. Chhetry, learned counsel for the informant/Opposite Party No. 2.

2. The petitioner, namely, **Sri Shiva Khakhlary**, son of Torani Khakhlary, resident of Belguri, Jagiroad, Police Station-Jagiroad, District-Morigaon has filed this application under Section 483 BNSS, 2023, praying for his bail in Sessions Case No. 100/2024 arising out of Gorchuk Police Station Case No. 426/2014 under Section 354(A) IPC read with Section 8 of the POCSO Act, 2012, in which he was arrested on 23.07.2024 and is in custody since then.

3. As per the FIR dated 08.10.2014 lodged before the Officer-in-Charge of Gorchuk Police Station by the informant/Opposite Party No. 2, the case is that on the morning of 08.10.2014 around 11:00 Hours when his 10 years old minor daughter was playing in the courtyard of his house, the petitioner, who resides near his house as a tenant, induced said minor daughter of the informant, took her to the backside of his house and in between the small gaps of the walls removed her undergarments and sexually assaulted her. At that time when his said minor girl made hue and cry, local people present nearby apprehended the petitioner. By the said FIR, the informant requested the police authorities to take appropriate legal action upon the petitioner and to do justice to him.

4. Said FIR of the informant was accordingly registered as Gorchuk Police Station Case No. 426/2014, noted above.

5. The petitioner submitted that considering his detention since 23.07.2024, his bail in the case should be considered. It is stated by him that on completion of the investigation, chargesheet in the case has already been filed. Therefore, his custodial detention in said Gorchuk P.S. Case is no longer required. It is also submitted by the petitioner that he shall abide by any terms and conditions imposed upon him by the Court while considering his bail in the case.

- 6.** The Court by order dated 13.09.2024 called for the records of the case.
- 7.** From the records it is seen that the victim was medically examined on 08.10.2024 itself before the Forensic Medicine & Toxicology, Guwahati Medical College, Guwahati and her statement under Section 164 CrPC was recorded by learned Judicial Magistrate First Class, Kamrup (Metro), Guwahati on 09.10.2024. The petitioner was arrested in said Gorchuk P.S. Case No. 426/2014 on 09.10.2024 and on 13.11.2024 he was released on bail in the case. On completion of the investigation of said Gorchuk P.S. Case No. 426/2014, Police on 26.11.2014 vide charge sheet No. 176/2014 submitted the charge sheet in the case against the petitioner under Section 354(A) IPC read with Section 8 of the POCSO Act, 2012. Thereafter, said Gorchuk P.S. Case No. 426/2014 was re-registered as Sessions Case No. 100/2024.
- 8.** After taking cognisance of the offence, the learned Additional Sessions Judge No. 2, Kamrup (M), Guwahati in said Sessions Case No. 100/2024 issued summons to the petitioner, who was already on bail in the said case. After issuance of summons, the petitioner appeared before the Court of learned Additional Sessions Judge No. 2, Kamrup (M), Guwahati on 10.06.2019. On 01.07.2019, Charge under Section 8 of the POCSO Act, 2012 was framed against the petitioner and summons were issued to the prosecution witnesses, fixing 01.08.2019 for evidence.
- 9.** On 23.10.2019, the Trial Court recorded the evidence of the informant as PW.1. On 18.11.2019, evidence of another prosecution witness as PW.2 was recorded. Thereafter, on two subsequent dates evidence could not be recorded as summons on the prosecution witnesses did not return. Since March 2020 because of the outbreak of Covid 19, evidence of witnesses could not be recorded for long.
- 10.** When the Court's work started regularly after Covid 19, fresh summons were issued to the petitioner as well as prosecution witness.
- 11.** From the records of the case it is seen that by order dated 21.09.2021 the learned Sessions Judge, Kamrup (Metro), Guwahati had withdrawn the records of said Sessions Case No. 100/2024 from the Court of learned Additional Sessions Judge No. 2, Kamrup (M), Guwahati on 10.06.2018 and transferred it to the Court of learned Special Judge, POCSO, Kamrup (Metro), Guwahati. Since 21.09.2021 said Sessions Case No. 100/2024 is pending before the Court of learned Special Judge, POCSO, Kamrup (Metro), Guwahati.
- 12.** It is also seen from the records of the case that since 06.06.2022 petitioner remained

absent in the case. As such by orders dated 22.06.2022; 12.07.2022; 17.09.2022, 29.10.2022; 23.11.2022 and 07.01.2023 learned Special Judge, POCSO issued BWA (Bailable Warrant of Arrest) to the petitioner for his appearance in the case.

13. As the petitioner did not appear in the case before the learned Special Judge, POCSO therefore, the said Court on 16.02.2023; 23.03.2023 and 03.05.2023 issued the orders of NBWA (Non Bailable Warrant of Arrest).

14. In spite of the orders of the NBWA as the petitioner did not appear in the matter, the learned Special Judge, POCSO, on 03.06.2023; 06.07.2023; 08.08.2023; 27.09.2023; 20.11.2023; 29.01.2024; 20.03.2024 and 20.05.2024 issued the orders of P & A (Proclamation and Attachment) against the petitioner with NBWA and further the order of BWA to his Bailor.

15. On 23.07.2024 petitioner was arrested was produced before the Court of learned Special Judge, POCSO, Kamrup (Metro), Guwahati in said Sessions Case No. 100/2024. The said Court of Special Judge, POCSO found that since 22.06.2022 the petitioner was absconding and avoided the trial of the said case and by order dated 23.07.2024 passed in said Sessions Case No. 100/2024 sent him to Judicial Custody and since he is in such custody.

16. From the records of the case it is seen that the learned Special Judge, POCSO, Kamrup (Metro), Guwahati in said Sessions Case No. 100/2024 have issued fresh summons to the remaining prosecution witnesses including the doctor and the investigating officer of the case directing the Special Public Prosecutor to take steps.

17. It is seen from the records that evidence of three prosecution witnesses have already been recorded. After the COVID-19 period was over and the Courts started function regularly, the petitioner absconded from appearing in the matter during the trial of the case since 22.06.2022 till he was arrested on 23.07.2024 and now the matter is pending for recording of evidence of the remaining prosecution witnesses, to whom the Court of learned Special Judge, POCSO, Kamrup (Metro), Guwahati in said Sessions Case No. 100/2024 have issued fresh summons.

18. Considering the entire aspect of the matter and in the aforesaid facts of the case, the petitioner is not entitled for bail in said Sessions Case No. 100/2024.

19. Accordingly, this bail application of the petitioner, **Sri Shiva Khakhlary**, son of Torani Khakhlary, in Sessions Case No. 100/2024 arising out of Gorchuk P.S. Case No. 426/2014,

presently pending before the Court of learned Special Judge, POCSO, Kamrup (Metro), Guwahati stands **rejected**.

JUDGE

Comparing Assistant