

GAHC010189072024



2024:GAU-AS:12689

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

Case No. : AB/2471/2024

GIASUDDIN ALIAS GIYASH UDDIN
S/O ABDUL HASSAN
VILL- UDKATI
P.O. DEWAGURI
P.S. LAHARIGHAT
DIST. MORIGAON, ASSAM
PIN CODE- 782127

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP, ASSAM

2:NUR BEGUM
D/O /O ABDUL HASEN
R/O VILL- UDKATI
P.O. DEWAGURI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM
PIN CODE- 78212

Advocate for the Petitioner : MR. M U MAHMUD, MS. D BORA, MRS. M SAIKIA, MR S ISLAM, MR S H MAHMUD

Advocate for the Respondent : PP, ASSAM, MR. A PHUKAN, Amicus Curiae, (R-2)

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

ORDER

13.12.2024

Heard Mr. M U Mahmud, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State/opposite party No. 1. Also heard Mr. A Phukan, learned Amicus Curiae for the informant/respondent No. 2.

2) Apprehending his arrest, the petitioner, namely, **Md. Giasuddin @ Giyash Uddin**, son of Abdul Hassan, resident of village Udkati, P.S.-Laharighat, District-Morigaon has filed this application under Section 482 BNSS, 2023 on 11.09.2024, praying for his pre-arrest bail in **POCSO Case No. 155/2022**, arising out of Laharighat Police Station Case No. 632/2021, under Sections 376/511 IPC read with Section 8 of the POCSO Act, 2012, corresponding to G.R. No. 3201/2021.

3) As per the FIR dated 21.09.2021 lodged by the informant/ respondent No. 2 before the Officer in Charge of Borchala Police Outpost under Laharighat Police Station, the case is that on 18.09.2021 at around 12:00 noon, while the informant's minor daughter was sleeping at home, the petitioner, entered the house, gagged her mouth and took her away with ill motive, with the help of two other co-accused of the case, to the backside of their house at Duadasti, where, the petitioner sexually assaulted her by removing her clothes and also tried to have physical relation with her. But as her minor daughter cried out for help and on hearing that as people in the locality came to their house, seeing them, the accused persons, including the petitioner herein, fled away from the place of the incident.

4) It is stated by the informant/respondent No.2 that since last several days, the accused persons of the case were disturbing her minor daughter and as such, by filing the said FIR, she requested the authority concerned of Borchala Police Outpost to take necessary action against those accused persons of the case.

5) Accordingly, said FIR of the informant dated 21.09.2021 was initially registered as Borchala Out Post G.D. Entry. No. 358 dated 21.09.2021 and thereafter, as Laharighat Police Station Case No. 632/2021 under Sections 376/511 IPC, corresponding to G.R. No.

3201/2021 was registered.

6) Mr. M U Mahmud, learned counsel for the petitioner submitted that the same informant subsequently on 01.06.2023 lodged another FIR before the Officer-in-Charge of Borchala Police Outpost against the petitioner, involving her same minor daughter that was registered as Laharighat Police Station Case No. 172/2023 under Sections 363/365 IPC, in which police, after completion of the investigation, submitted the charge-sheet against the petitioner under Sections 363/365/368/376(3) of the IPC read with Section 6 of the POCSO Act, 2012.

7) Mr. M U Mahmud, learned counsel for the petitioner stated that after filing the chargesheet in said Laharighat P.S. Case No. 172/2023, it was registered as POCSO Case No. 258/2023, wherein, the learned Special Judge (POCSO) cum Additional Sessions Judge, Morigaon after considering the evidence of both, the prosecution and the defence, acquitted the petitioner from the said case. To that extent, the petitioner has annexed a copy of the Judgment dated 14.12.2023, passed in said POCSO Case No. 258/2023 arising out of Laharighat P.S. Case No. 172/2023.

8) Mr. M U Mahmud, learned counsel for the petitioner submitted that as the petitioner was already in custody in said Laharighat P.S. Case No. 172/2023, therefore, police in the case in hand, i.e., Laharighat P.S. Case No. 632/2021 could not have shown him as an absconder in the charge-sheet filed in said Laharighat P.S. Case No. 632/2021. As such, the Court should consider this bail prayer of the petitioner, thereby enabling him to appear before the learned Special Judge (POCSO), in said Laharighat P.S. Case.

9) By order dated 19.09.2024 the Court called for the relevant case records.

10) On perusal of the case records it is seen that, on completion of the investigation of the case, police submitted the charge-sheet in Laharighat P.S. Case No. 632/2021 before the Court of the learned Special Judge (POCSO), Morigaon on 20.09.2022.

11) Thereafter, the said Laharighat P.S. Case No. 632/2021, corresponding to G.R. No. 3201/2021 was re-registered as POCSO Case No. 155/2022 before the Court of the learned Special Judge (POCSO), Morigaon.

12) On 20.09.2022, the learned Special Judge (POCSO), Morigaon in said POCSO Case No. 155/2022 took cognizance of the offences under Sections 376/511 IPC read with Section 18

of the POCSO Act, 2012 against the petitioner and issued summons to him for his appearance.

13) The case record also reveals that after due service of summons in said POCSO Case No. 155/2022 upon the petitioner, he, through his counsel, appeared in the matter and prayed for time for his appearance before the said Special Court, Morigaon. On 18.03.2023 and 09.06.2023 counsel for the petitioner appeared in the case and prayed time for his appearance, which were allowed by the Court. But on the subsequent dates on 15.07.2023 and 22.09.2023, the petitioner remained absent without taking any steps in said POCSO Case No. 155/2022. As such the learned Special Judge on 15.07.2023 issued an order of BWA (Bailable Warrant of Arrest) for appearance of the petitioner and on 22.09.2023 coming to know that he is lodged in jail in said POCSO Case No. 258/2023 arising out of Laharighat P.S. Case No. 172/2023, the said Court on 22.09.2023 directed for production of the petitioner in said POCSO Case No. 155/2022 fixing the matter on 06.10.2023 and on 06.10.2023, the matter was re-fixed on 20.10.2023.

14) On 20.10.2023, the learned Court of Special Judge (POCSO), Morigaon was informed that the petitioner was already released from jail on 10.10.2023 in said POCSO Case No. 258/2023 arising out of Laharighat P.S. Case No. 172/2023 and as such he could not be produced before the Court from jail.

15) Record of the case reveals that the petitioner after his release from jail on 10.10.2023 in said POCSO Case No. 258/2023 arising out of Laharighat P.S. Case No. 172/2023 did not appear before the Court of learned Special Judge (POCSO), Morigaon in the POCSO Case No. 155/2022 arising out of Laharighat P.S. Case No. 632/2021 since 27.12.2023 upto 15.10.2024 on various pretext by filing petitions and the said POCSO Case No. 155/2022 arising out of Laharighat P.S. Case No. 632/2021 is still pending in the stage of 'appearance, copy and consideration of charge' since 22.09.2022, for non-appearance of the petitioner in the case.

16) Petitioner has filed this pre-arrest bail application in said POCSO Case No. 155/2022, on 11.09.2024, as noted above.

17) Considering the entire aspects of the matter and for the reasons above, this Court is of the view that it is not a fit case to grant pre-arrest bail to the petitioner in said POCSO Case

No. 155/2022, arising out of Laharighat P.S. Case No. 632/2021.

18) Accordingly, this pre-arrest bail application of the petitioner, namely, **Md. Giasuddin @ Giyash Uddin**, son of Abdul Hassan in said **POCSO Case No. 155/2022**, arising out of Laharighat Police Station Case No. 632/2021, pending before the Court of learned Special Judge (POCSO), Morigaon, stands **rejected**.

19) The Gauhati High Court Legal Services Committee shall pay the remuneration to Mr. A Phukan, learned Amicus Curiae, on raising a bill by him as he assisted the Court in adjudicating this matter, who appeared for the informant/respondent No. 2 on being appointed by the Court.

JUDGE

Comparing Assistant