

GAHC010195082024



2024:GAU-AS:12577

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

Case No. : Bail Appln./2871/2024

SOYAD ABDUL ROUF @ RUFUL
SON OF LATE SOYAD ABDUL SUFAN, RESIDENT OF VILLAGE-
BUNDASHIL, PO- BADARPUR, PS- BADARPUR, DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:AKHTAR AHMED
SON OF LATE MOYAB ALI
VILLAGE- BUNDASHIL
PS- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 78880

Advocate for the Petitioner : MR H R CHOUDHURY, S. TALUKDAR, A S PRODHANI

Advocate for the Respondent : PP, ASSAM, MS B CHOUDHURY, AMICUS CURIAE (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

12.12.2024

Heard Mr. H. R. Choudhury, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No.1 and Ms. B. Choudhury, learned Amicus Curiae for the respondent No.2.

This application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for releasing the petitioner on regular bail in connection with Special Sessions (POCSO) Case No.264/2023 arising out of Badarpur P.S. Case No.329/2023 proceeded under Section 354 of IPC read with Section 8 of the POCSO Act which is pending before the court of learned Sessions Judge, Karimganj.

The scanned copy of the Case Record has already been received and I have perused the same.

It is submitted by Mr. Choudhury, learned counsel for the petitioner, that the present petitioner has been behind bar since 04.12.2023, and hence, considering the length of his detention, he may be granted bail. He further submits that the case has already been charge-sheeted under Section 354 of the IPC read with Section 8 of the POCSO Act, wherein the penalty provision is three years, and the petitioner has already spent more than one year in custody. He also submits that the petitioner is 50 years of age, a permanent resident of the local area, and thus, there is no scope for him to abscond if granted bail. Instead, he is ready and willing to appear before the trial court on each and every date fixed.

In this context, Mr. Baruah, learned Additional Public Prosecutor, submits that the charge was framed on 01.04.2024, and thereafter the case was fixed for evidence,

but to date, the victim, a 7-year-old minor child, has not been examined in connection with the case. He further submits that on one occasion, the prosecution witnesses were present, but due to an adjournment prayed by the defence counsel, the witnesses could not be examined. He accordingly submits that until the examination of the victim is completed, the accused/petitioner should not be granted bail, as there is a chance of hampering or tampering with the evidence of the minor victim.

On the other hand, Ms. Choudhury, learned Amicus Curiae, has submitted that at the relevant time of the incident, the victim was only 7 years old, and her medical report supports the prosecution's case. Therefore, she submits that the accused/petitioner should not be granted bail at this stage.

Considering the submissions of the learned counsels for both sides and also taking into account the materials available in the case record, it is seen that the accused/petitioner has been in custody for a considerable period. However, considering the nature of the offence and the fact that the victim is yet to be examined, I find that releasing the accused/petitioner at this stage may hamper the evidence specially the minor victim and thus, I do not find it a fit case where the privilege of bail can be granted to the accused/petitioner, and the bail application is, therefore, rejected.

In terms of above, this Bail Application stands disposed of.

JUDGE

Comparing Assistant