

GAHC010198272024



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

Case No. : Bail Appln./2913/2024

HABIJUL KHAN AND ANR
S/O- RABIUL KHAN VILL- MATHAUBARI P.O- MAKRIKUCHI P.S-
TARABARI DIST- BARPETA, ASSAM, PIN - 781305

2: RESMINA PARBIN
W/O - RUP KHAN VILL- TARABARI SAR P.O- TARABARI P.S TARABARI/
BOHARI DIST- BARPETA
ASSAM PIN- 78130

VERSUS

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

2: PARITOSH BISWAS
S/O- KHUSHI MOHAN BISWAS R/O- SARTHEBARI P.O- SARTHEBARI P.S-
SARTHEBARI DIST- BARPETA
ASSAM PIN - 781307

Advocate for the Petitioner : MR. A MOBARAQUE, S A AKIB

Advocate for the Respondent : PP, ASSAM, MS. D SAIKIA, MS. D SAIKIA (AMICUS CURAIE, R-2)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

07-11-2024

Heard Mr. A. Mobaraque, learned counsel for the petitioners and Mr. K. K. Parasar, learned Additional Public Prosecutor, Assam for the State. Also heard Ms. Debashree Saikia, learned Amicus Curiae for the informant/opposite party No.2.

2. By this application under Section 483 BNSS, 2023, the petitioners, namely, **(1) Habijul Khan @ Habiju Khan**, son of Rabiul Khan, village- Mathuabari, Makrikuchi under P.S-Tarabari, District-Barpeta and **(2) Resmina Parbin**, wife of Rup Khan, resident of Village-Tarabari Char, under P.S.-Bohari, District-Barpeta have prayed for their bail in **Dispur P.S. Case No. 977/2024**, registered under Sections 61(2)/64(1)/3(5) of the BNS, 2023 read with Section 4 of the POCSO Act, 2012 corresponding to G.R. No. 5375/2024, in which they were arrested on 12.09.2024 and in custody since then.

3. As per the FIR dated 11.09.2024 lodged by the complainant/opposite party No.2 that a girl, name withheld, had a relation with one Sunny Kumar Shah who has a Auto Motor Shop at Beltola. On 02.09.2024 said Sunny with his friend Rup Khan while travelling to Barpeta met with an accident at Mukalmua. Said Rup Khan informed the said girl who visited Sunny at Mukalmua. Sunny and the said girl on the next day morning returned to his tenant room at Beltola where she was looking after injured Sunny. As his motorcycle was damaged in the said accident and kept at Bohora for repairing Sunny went to Bohora to get his motorcycle but he did not return. Instead Rup Khan and Hafijul Khan came to

the room of Sunny at Beltola and when the girl asked them about Sunny they replied that he will return after the bike is fully repaired. Then the girl call Sunny in his mobile that was found switched off. At night, Rup Khan and Hafijul Khan came to the house of Sunny and raped the girl forcefully threatening her of dire consequences inspite of her objection and continued with such act for three days. Though the girl informed Resmina Parbin wife of Rup Khan, she just brushed aside her allegation against her husband Rup Khan and said Habijul Khan. On the fourth day the girl escaped from Beltola with the help of some friends of Sunny who sent her to Barpeta where she informed the local people. The girl involved in the case is a minor. Accordingly, the FIR was lodged on 11.09.2024 before the Dispur Police Station that was registered as Dispur P.S. Case No. 977/2024 under Sections 61(2)/64(1)/3(5) of the BNS, 2023 read with Section 4 of the POCSO Act, 2012.

4. The police after conducting the enquiry arrested the present petitioners. However, main accused Rup Khan fled away and evaded arrest.

5. It is submitted by the petitioner that they are no way connected with the case and falsely implicated in said Dispur P.S. Case No. 977/2024.

6. Perused the case diary placed before the Court today by Mr. K. K. Parasar, learned Addl. PP, Assam.

7. Perused the statement of the minor victim girl recorded under Section 180 BNSS, recorded by the concerned Investigating Officer of the case as well as her statement under Section 183 of the BNSS recorded by the learned Judicial Magistrate, First Class, Kamrup (Metro) on 12.09.2024, wherein, the minor victim girl implicated said Rup Khan and the petitioner No.1, namely, Habijul Khan @ Habiju Khan of forcefully committing rape on her. However, in her such

statements the minor victim stated that inspite of the petitioner No.2 was informed about the said heinous act on her said petitioner No.2 did not give any hid to her claim/allegation and laughed aside.

8. From the case diary it is also seen that independent witnesses in their statements before the concerned Investigating Officer of the case implicated said Rup Khan and petitioner No.1 Habijul Khan @ Habijul Khan pertaining to their involvement in the alleged crime.

9. Considering the above, and the material in the case diary, regarding involvement of the petitioner No.1, namely, **Habijul Khan @ Habiju Khan** the Court is of the view that his custodial detention since 12.09.2024 does not entitle him for his bail in said Dispur P.S. Case No. 977/2024. As such, bail prayer of the petitioner No.1, namely, **Habijul Khan @ Habiju Khan** in said Dispur P.S. Case No. 977/2024 stands rejected.

10. Considering the materials in the case diary and the statements of the victim, noted above and considering the period of detention of the petitioner No.2, namely, **Resmina Parbin** since 12.09.2024, this Court is of the view that her further custodial detention for investigation of said Dispur P.S. Case No. 977/2024 is not warranted. As such, her bail application in said Dispur P.S. Case No. 977/2024 is accepted.

11. Accordingly, the petitioner No.2, namely, **Resmina Parbin** be released on bail in said **Dispur P.S. Case No. 977/2024** on furnishing a bail bond of Rs.50,000/- with two local sureties of the like amount, to the satisfaction of the learned Special Judge, (POCSO), Kamrup (Metro), Guwahati on conditions that said petitioner No.2, Resmina Parbin – **(i)** shall appear during the office hours before the Investigating Officer of said Dispur P. S. Case No. 977/2024 as and

when she is required for necessary investigation of said Dispur P.S. Case; **(ii)** shall not leave the territorial jurisdiction of said Dispur Police Station, without obtaining prior written permission from the concerned Investigating Officer of the case; **(iii)** shall not hamper with the investigation, or tamper with the evidence of the case; **(iv)** 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 them from disclosing such facts to the Court or to any police officer; **(v)** she shall not involve herself in any criminal activities and **(vi)** shall not threaten the minor victim girl or anyone in her family by herself or by others, acting on her behalf.

12. Any violation of the aforesaid terms and conditions by the petitioner No.2, namely, Resmina Parbin, the bail granted to her in said Dispur P.S. Case No. 977/2024 shall stand automatically vacated.

13. The bail application accordingly stands disposed of to the extent above.

14. Return the case diary.

JUDGE

Comparing Assistant