

GAHC010198982024



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

Case No. : Bail Appln./2917/2024

ARSHAD ALI
S/O SAHJAHAN ALI, R/O VILL- DEBRADI, P.S.- BARPETA, PIN CODE-781311,
DIST- BARPETA, ASSAM

VERSUS

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

2:HANNAN ALI
S/O HAMID ALI
R/O VILL- KHANGRA
P.S.-TARABARI
PIN CODE-781305
DIST- BARPETA
ASSA

Advocate for the Petitioner : MR. S C BISWAS, MR. A K DAS,MR. F A HASSAN,MS. K L R
YANTHAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

23.10.2024

Heard Mr. S C Biswas, learned counsel for the petitioner and Mr. B Sharma,
learned Additional Public Prosecutor, Assam for the State. Also heard Ms. Manisha

Karen Brown, learned Amicus Curiae appearing for the informant/opposite party No.2.

2) By this application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Arshad Ali**, son of Sahjahan Ali, resident of Village Debradi, P.S.-Barpeta, District- Barpeta, has prayed for his bail in Tarabari Police Station Case No. 49/2024 registered under Sections 6/14/15 of the POCSO Act, 2012 read with Section 67(B) of the Information Technology Act, 2000, in which he was arrested on 26.08.2024 and in custody since then.

3) As per the written FIR dated 21.08.2024, lodged by the informant/complainant Hanan Ali of village Khangra under Tarabari Police Station of District Barpeta, before the Officer-in-Charge of Tarabari Police Station, is that the accused Arshad Ali had a love affair with his minor daughter of 17 years about 6 months back. Three months back the said accused in the pretext of having such love affair called his minor daughter to Chenga to meet her. When she reached Chenga, the accused person picked up his said minor victim girl from Chenga in a four wheeler car and proceeded towards Barpeta. After travelling for some time, the accused stopped the car, took his minor daughter to a house in which she was wrongfully confined, wherein he had forcefully sexual intercourse with her against her will and objection and also made obscene photos and videos of her, which he had uploaded in the name of his minor daughter opening a fake Instagram i/d account, threatening her of dire consequences stating that if she does not listen to the command of the accused, he will upload more of her such obscene photographs and videos in the social media in future. By the same, the complainant prayed before the Officer concerned to take appropriate legal action against accused named in the said FIR dated 21.02.2024.

4) Accordingly, Tarabari Police Station Case No. 49/2024 under Sections 6/14/15 of the POCSO Act, 2012 read with Section 67(B) of the IT Act, 2000 was registered and the petitioner was arrested on 26.08.2024

5) The petitioner stated that he and the victim girl was having affairs and their family members were totally against their such relation and that on the date of occurrence the victim girl voluntarily arrived at his house and on her such arrival, his

family members rebuked her and called her father, i.e., the complainant/informant over phone immediately, asking him to take back his daughter. Accordingly on reaching of the informant in his house, there was some heated altercations between the informant and his parents and thereafter the informant took back his daughter and then lodged the FIR relating to said Tarabari P.S. Case No. 49/2024.

6) Petitioner also denied of taking any obscene photographs or videos of the victim girl and uploading it in the social media stating that the victim is a major and voluntarily arrived at his house. It is also stated on behalf of the petitioner FIR of the case itself indicates that the same has been lodged after three months of the incident thereby hatching a conspiracy to malign his image as well as members of his family in the eyes of the society.

7) Mr. Biswas, learned counsel for the petitioner relying on the decision of the Hon'ble Bombay High Court in the case of *Sunil Mahadev Patil Vs. State of Maharashtra* decided on 03.08.2015, reported in *2015 0 Supreme (Bom) 1186* stated that since the victim and the petitioner had love affair he is entitled for bail.

8) Perused the case diary that was called for by order dated 08.10.2024. It is seen from the records of the case that police seized the original birth certificate of the minor victim issued by the Registrar of Birth and Death Chenga PHC, District Barpeta, issued on 20.08.2007 vide registration No.1712/2007 indicating date of birth of the victim as 13.08.2007, which was duly verified by the said Registrar on 10.09.2024.

9) Perused the statement of the minor victim recorded under Section 183 of BNSS, 2023 on 23.08.2024 by the learned Judicial Magistrate First Class, Barpeta in which the victim indicated that she had an affair with the accused and on the date of the incident when she was at Chenga after attending the computer class at NEETs Computer Academy, the accused came to her asking her to sit in the car in which he came promising her to drop her later and took her towards Barpeta. In the said Section 183 statement, the minor victim stated that the accused had intercourse with her forcefully inspite of her objection and protest, he made photographs and video of such obscene act and showed said obscene photographs and videos to others and also threatened

her stating that if she does not keep relation with him he shall make those obscene photographs viral. She further stated that about 10 days back, he made her those obscene photographs viral by opening fake account in the Instagram. She also made similar statements under Section 181 BNSS before police.

10) Record indicates that one Realme mobile handset of the accused petitioner with AirTel SIM Card No. 7002237846 was seized by police in the case. Case record also indicates that Instagram account in the name of the victim was opened on 19.06.2024 with the said No. 7002237846 that was still alive on the date of verification on 25 and 26th of August 2024.

11) On perusal of the Judgment in the case of *Sunil Mahadev Patil* (Supra), it is found that the said case is not applicable in the present case. In the said case, though the victim was a minor she and the accused of the case had love affair with each other, she left her house at her own will and eloped with the accused of the case, lived with the said accused at her own motion, married with him in a temple exchanging garlands, lived together in the house of their relative for about 3 months till the date of the arrest of the accused and when she made a call to her distant aunt requesting to make arrangement of some money disclosing that she is married with the accused and wants to stay with him, at that stage her family members informed the police and the accused was accordingly arrested. The said case the accused was of 20 years old.

12) Facts of the said case are not similar to the present case. In the case in hand, the accused petitioner is of 28 years of old, whereas the victim was of 16 years 9 months at the time of occurrence of the incident. Further, the petitioner threatened the minor victim girl, took obscene photographs of her and made video of those, made viral those obscene photographs of her by opening fake account in the Instagram.

13) The case diary reveals sufficient incriminating materials with regard to the involvement of the petitioner in the alleged crime.

14) For the reasons of availability of such incriminating materials in the case diary against the petitioner with regard to his involvement in the alleged crime, considering his detention since 26.08.2024, the Court is of the view that it is not a fit case to grant

bail to the petitioner, namely, **Arshad Ali**, in said Tarabari Police Station Case No. 49/2024 under Sections 6/14/15 of the POCSO Act, 2012 read with Section 67(B) of the Information Technology Act, 2000.

15) Accordingly, this bail application of the petitioner, named above, in said Tarabari Police Station Case No. 49/2024 stands rejected.

16) Return the case diary herewith.

JUDGE

Comparing Assistant