

GAHC010204012024



2024:GAU-AS:12598

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

Case No. : Bail Appln./2990/2024

NUR ALAM AZAD
S/O MD ABDUL KALAM AZAD, R/O VILLAGE CHARAIJANIA, P.S. SOOTEA,
DISTRICT BISWANATH CHARIALI, ASSAM

VERSUS

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

2:MISS LILIMA BEGUM
W/O MD. RAJU KHAN
R/O VILL- CHARAIJANIA
P.S.-SOOTEA
DIST- BISWANATH
ASSA

Advocate for the Petitioner : TUN RAJKHOWA,

Advocate for the Respondent : PP, ASSAM, DR. P AGARWAL, AMICUS CURIAE (R-2)

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

ORDER

12.12.2024

Heard Ms. T Rajkhowa, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State. Also heard Ms. S Nath, learned counsel appearing on behalf of Dr. P Agarwal, learned Amicus Curiae for the respondent No.2/informant of the case.

2. The petitioner, namely, **Md. Nur Alam Azad**, son of Md. Abdul Kalam Azad, resident of village-Charaijania, P.S.-Sootea, District-Biswanath Chariali, has filed this application under Section 483 BNSS, 2023, praying for his release on bail in Special (POCSO) Case No. 10/2024 arising out of Sootea Police Station Case No. 16/2024 registered under Sections 376(3)/313 IPC read with Section 6 of the POCSO Act, in which he was arrested on 24.02.2024 and is in custody since then.

3. The petitioner is a charge-sheeted accused in said Sootea P.S. Case No. 16/2024 and in the meanwhile, prosecution has adduced evidence of four of its witnesses who were thoroughly cross-examined, including the minor victim, informant of the case and the concerned Doctor.

4. As such, it is urged before the Court by Ms. T Rajkhowa, learned counsel for the petitioner that the petitioner should be considered for his bail in said Special (POCSO) Case No. 10/2024 presently pending before the Court of the learned Special Judge (POCSO), Biswanath Chariali, Biswanath.

5. Perused the case records that was called for by order dated 21.11.2024.

6. From the case records it is seen that police have already seized the birth certificate of the minor victim girl issued on 15.09.2009 by the Registrar, Birth & Death, Medical and Health Officer, Sootea NPHC, District-Sonitpur, Assam, which reveals the date of birth of the minor victim as 25.08.2009.

7. As per the FIR of the case lodged by the informant/respondent No. 2 before the

Officer-in-Charge of Sootea Police Station on 23.02.2024, the case is that the petitioner who used to stay nearby the house of the informant induced her minor daughter of 15 years and took her to his house and in absence of any of his family members in his house the petitioner forcefully raped her minor daughter. As the monthly menstruation of her minor daughter did not take place, the petitioner tried to abort the minor daughter of the informant forcefully by giving her some tablets and on consuming those the victim had severe abdominal pain and bleeding. Because of such severe bleeding when the informant enquired the matter with the minor victim girl, she revealed the said incident to her family members and accordingly, the FIR was lodged on 23.02.2024.

8. On the basis of the FIR of the informant dated 23.02.2024, noted above, Sootea P.S. Case No. 16/2024 was registered under Sections 376(3)/313 IPC read with Section 6 of the POCSO Act against the petitioner.

9. The medical examination of the victim girl was accordingly done and her statement under Section 164 CrPC was recorded by the learned Chief Judicial Magistrate, Biswanath on 26.02.2024.

10. It is seen from the records of the case that out of eight prosecution witnesses, as of now, the learned Special Judge (POCSO), Biswanath have recorded the evidence of four of the prosecution witnesses, including the minor victim girl, the informant and the concerned Doctor who were thoroughly cross-examined by the defence.

11. Considering the date of birth of the victim girl as 25.08.2009 and the fact that the alleged incident occurred in the month of January, 2024, the minor victim girl was found to be of 14 years 5 months only at the time of the incident.

12. Moreover, it is also found that the petitioner is a married man having two wives and children from them.

13. Considering his involvement in such a heinous crime of having forceful sex with a minor girl and that the trial of the case presently pending before the Court of the learned Special Judge (POCSO), Biswanath Chariali, Biswanath is progressing, the Court is of the view that detention of the petitioner since 24.02.2024 cannot be considered for his bail in said Special (POCSO) Case No. 10/2024.

14. Accordingly, this bail application of the petitioner, **Md. Nur Alam Azad**, son of Md. Abdul Kalam Azad, in Special (POCSO) Case No. 10/2024 arising out of Sootea Police Station Case No. 16/2024, presently pending before the Court of the learned Special Judge (POCSO), Biswanath Chariali, Biswanath is rejected.

JUDGE

Comparing Assistant