

GAHC010204462024



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

Case No. : Bail Appln./3001/2024

DILIP SARMAH
S/O LATE CHENIRAM SARMAH, R/O LAKHIMI NAGAR, NEAR RIANSHI
APARTMENT, P.S.-HATIGAON, KAMRUP (M), ASSAM

VERSUS

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

2:SMTI ANJU DEVI
W/O HEMANTA SARMA BORDOLOI
R/O JANAKPUR
KAHILIPARA
SQUARE ENCLAVE
P.S.-DISPUR
GUWAHATI-781006
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MS.TWINKLE SARMA, MR S PARASHAR

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

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29-10-2024

1) Heard Mr. S. Parasar, learned counsel for the petitioner and Ms. S. H. Borah, learned Additional Public Prosecutor, Assam for the State. Also heard Ms. Priyanki Das, learned Amicus Curiae for the informant/Opposite Party No.2.

2) By this application under Section 483 BNSS, 2023 the petitioner, namely, **Sri Dilip Sarmah**, son of Late Cheniram Sarmah, resident of Lakhimi Nagar, under Hatigaon Police Station of District-Kamrup (Metro), a charge sheeted accused, has prayed for his bail in Session (Special) Case No. 283/2023, arising out of Hatigaon Police Station Case No. 332/2023, under Section 376 IPC, read with Section 6 of the POCSO Act, wherein he was arrested on 11.10.2023 and in custody since then.

3) As per the FIR of the case dated 10.10.2023 lodged by the informant/Opposite Party No. 2, Head Mistress of the school in which the minor victim girl is studying, is that said minor victim girl on 09.10.2023 informed her class teacher as well as her that step father of said minor victim girl used to sexually torture and rape her and she requested them to help her. The said informant also stated that at first "1098" ("1098" is the Helpline number of CHILDLINE India) was informed and the authorities of said "1098" informed the Bhagaduttapur Police Out Post. The in-Charge of said Bhagaduttapur Police Out Post took custody of said minor victim and brought her to the authorities of Hatigaon Police Station since her father is a resident of Lakhimi Nagar under Hatigaon Police Station. By the said FIR the informant requested the concerned police authorities to provide justice to the minor victim girl.

4) Said FIR of the informant was accordingly registered on 10.10.2023 itself as Hatigaon PS Case No. 332/2023 under Section 376 IPC, read with Section 6 of the POCSO Act and the accused petitioner was arrested on 11.10.2023. After completion of the investigation of the

case the concerned Investigating Officer submitted the Charge Sheet in said Hatigaon PS CaseNo. 332/2023 vide CS No. 277/2023 dated 29.11.2023 against the petitioner Dilip Sarmah, under section 376 IPC, read with Section 6 of the POCSO Act.

5) Petitioner stated that since 11.10.2023 he is in custody for more than one year and that he has been falsely implicated in the case by her step daughter as he being her stepfather used to scold her because of her unruly acts. It is also stated by the petitioner that in the meanwhile the learned Trial Court has already recorded evidence of four prosecution witnesses including that of the alleged minor victim, the informant and as well as the doctor concerned who examined the said minor victim.

6) Perused the records of Session (Special) Case No. 283/2023 as well as the Case Diary of Hatigaon PS Case No. 332/2023 that were called for by the Court by order dated 30.09.2024 from the Court of learned Special (POCSO) Judge, Kamrup (M), Guwahati.

7) It is seen that learned Special (POCSO) Judge, Kamrup (M), Guwahati on 22.03.2024 framed charge under Section 6 of the POCSO Act in said Session (Special) Case No. 283/2023 against the petitioner. It is also seen that police seized birth certificate of the minor victim girl showing her date of birth as 28 April 2012 issued on 12.07.2024 vide Registration No. K 877/12.05.2012 issued by the authorities concerned in the Department of Health, Registrar of Birth and Death.

8) Perused the statement of the minor victim girl recorded by the concern investigating officer under section 161 CrPC, her statement under section 164 CrPC made before they learned Judicial Magistrate First Class, Kamrup (Metro) Guwahati on 11.10.2023, her Medical Examination Report dated 14.10.2023 issued by the Senior Medical Officer, Department of Forensic Medicine, Gauhati Medical College & Hospital, Guwahati and her deposition made before the learned Trial Judge, who was thoroughly cross examined by the Défense.

9) From the records it is also seen that out of the five prosecution witnesses named in the chargesheet of the case, evidence of three prosecution witnesses and the concerned medical doctor who examined the minor victim girl have already been recorded by the learned trial court.

10) From the perusal of the records of the case and finding incriminating materials therein against the petitioner regarding his involvement in the alleged crime, this court is of the view that considering his detention since 11.10.2023, it is not a fit case to grant bail to the petitioner in said Session (Special) Case No. 283/2023, arising out of Hatigaon Police Station Case No. 332/2023 presently pending before the Court of learned Special (POCSO) Judge, Kamrup (Metro), Guwahati at this stage.

11) Accordingly, this bail application of the petitioner, **Sri Dilip Sarmah**, son of Late Cheniram Sarmah in said Session (Special) Case No. 283/2023 arising out of Hatigaon Police Station Case No. 332/2023 stands **rejected**.

12) The Gauhati High Court Legal Services Committee shall pay the remuneration to Ms. Pryanki Das, learned Amicus Curiae, who assisted the Court, on raising a bill by her.

JUDGE

Comparing Assistant