

GAHC010213152024



2024:GAU-AS:11605

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

Case No. : Bail Appln./3170/2024

NURUZZAMAL @ NUR JAMAL @ NURFAN
S/O SHER ALI, R/O VILL- JANATA BAZAR, BALIKURI NC, P.S.-KALGACHIA,
DIST-BONGAIGAON, ASSAM

VERSUS

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

2:ROKIYA KHATUN @ RUFIIJA KHATUN
W/O ATOWAR RAHMAN
VILL- NOWAGAON
P.S.-MANIKPUR
DIST- BONGAIGAON
ASSA

Advocate for the Petitioner : MR A K AZAD, MR. I HUSSAIN

Advocate for the Respondent : PP, ASSAM, MS A BEGUM (R-2)

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

ORDER

25.11.2024

Heard Mr. A K Azad, learned counsel for the petitioner and Mr. K K Parashar, learned Additional Public Prosecutor, Assam, for the State/respondent No. 1. Also heard Ms. A Begum, learned counsel for the informant/respondent No. 2.

2) By this application filed under Section 483 BNSS, 2023, the petitioner, namely, **Nuruzzamal @Nur Jamal @Nurfan**, son of Sher Ali, resident of Janata Bazar, Balikuri NC, Police Station-Kalagachia, District-Bongaigaon, is praying for his bail in **Manikpur Police Station Case No. 79/2024**, corresponding to G.R. No. 339/2024, registered under Section 376 of the IPC read with Section 6 of the POCSO Act, 2012, wherein, he was arrested on 26.07.2024 and is in custody since then.

3) As per the FIR dated 01.06.2024 lodged before the Officer-in-Charge, Bongaigaon Police Station, Bongaigaon by the informant/complainant, the allegation against the petitioner is that in absence of any family members in the house, the petitioner, by inducing the informant's minor daughter, was having physical relation with her for the last 2 years. About 4 months back, when the petitioner was having physical relation with the informant's minor daughter, she made hue and cry and at that point of time, the informant/mother of the victim girl, father of the victim girl and another person, rushed to the place of occurrence, i.e., inside their house and found the petitioner committing such illegal act.

3) As such, the petitioner was detained and his father was informed. However, both the petitioner and his father assured the informant, i.e., the parents of the victim girl and others present in their house that the petitioner will marry the victim girl, on her attaining 18 years of age.

4) Considering such assurance and giving respect to the family members of the petitioner, the informant neither lodged any FIR nor brought it to the notice of the public. But the petitioner thereafter refused to accept the victim girl.

5) Hence, the FIR was accordingly lodged before the Officer-in-Charge, Bongaigaon, where it was registered as Manikpur P.S. Case No. 79/2024 corresponding to G.R. No. 339/2024 under Section 376 of the IPC read with Section 6 of the POCSO Act, 2012.

6) During investigation, police apprehended the petitioner on 26.07.2024 and produced him before the learned Special Judge (POCSO), Bongaigaon and since then, he is in custody.

7) From the case record of said Manikpur P.S. Case No. 78/2024 that was called for from the Court of the learned Special Judge (POCSO), Bongaigaon it is seen that police after completion of the investigation have already submitted charge sheet in said Manikpur P.S. Case No. 79/2024, which was brought to the notice of the learned Special Judge (POCSO), Bongaigaon on 24.10.2024.

8) In the meanwhile, the victim girl on 22.08.2024 gave birth to a baby boy and on the prayer of the concerned Investigating Officer of the case, learned Special Judge (POCSO), Bongaigaon allowed for the DNA test of the said baby.

9) In the meanwhile, blood samples of the child born to the minor victim as well as that of the petitioner were collected and then forwarded to the Forensic Science Laboratory, Assam for DNA examination of the child. However, the same is yet to be received from the FSL.

10) From the statement of the victim recorded before the learned Sub Divisional Judicial Magistrate, Bongaigaon under Section 164 Cr.P.C. on 05.06.2024 as well as her statement recorded by the police under Section 161 Cr.P.C., both are found to be same where she stated that it is the petitioner with whom she was having a love affair for the last 2 years and petitioner used to visit her every 2/3 days during the daytime in absence of her parents who

remains out of the house during the daytime for their works and her brother and sister goes to school and during the absence of any family members in the house of the victim girl, the petitioner, on various pretexts used to have physical relation with her inspite of her objection and resistance, promising her to marry her in the future.

11) However, one day, about few months back, when the petitioner was having forceful physical relation with the minor girl, she made hue and cry and on hearing that her parents and

grandfather entered into the room and detained the petitioner and informed his father, who arrived at the place of occurrence. Later, both the petitioner and his father assured that the victim girl and her parents and family members that she will be married to the petitioner, on her attaining 18 years of age. But when the petitioner and his father were informed about her pregnancy, they refused to marry her, inspite of her attaining 18 years of age.

12) The birth certificate of the victim girl that was issued by the S.D.M and Health Officer, Manikpur Public Health Centre, Bongaigaon on 21.05.2009 vide registration No. 626 dated 24.06.2007, was collected by the concerned Investigating Officer of the case for the parents of the victim girl that reflects her date of birth as 24.03.2006.

13) Further, the copy of the registration card issued in the name of the victim girl by the Board of Secondary Education, Assam in the year 2022 also showed her date of birth as 24.03.2006.

14) Moreover, case record indicates that as per the report of the Principal of Nowagaon Higher Secondary School, date of birth of the victim girl as 24.03.2006 and that she joined the said school from Jhawbari M.V. School.

15) But the authorities concerned of the PHE, from where the said birth certificate was issued in favour of the victim girl, indicated that no such birth certificate was ever issued by the said authority in the name of the victim girl either in the year 2006, 2007 or in the year 2009.

16) As per the registration card issued by SEBA, the victim girl was minor at the time of the occurrence of the incident, whereas the petitioner was of 25 years old.

17) However, the Investigating Officer of the said case is yet to file his supplementary charge-sheet in said Manikpur P.S. Case No. 79/2024, which is to be submitted after obtaining the DNA report of the child born to the victim girl.

18) From the 164 Cr.P.C statement of the victim, it is seen that after becoming pregnant, she stopped going to school, being ashamed.

19) Ms. A Begum, learned counsel for the informant/respondent No. 2 on instruction, submitted that the informant does not have any objection if the petitioner, who is in custody since

26.07.2024, is released on bail.

20) From the case records, it is found that though the charge-sheet was of 11.10.2024 and the supplementary charge-sheet is yet to be filed, as noted above, the said charge-sheet of Manikpur P.S. Case No. 79/2024 was placed before the learned Special Judge (POCSO), Bongaigaon only on 24.10.2024, whereas the petitioner was taken into custody on 26.07.2024.

21) Considering the above, and also considering the fact that the petitioner, since 26.07.2024, on his 91st day of custody, the charge sheet was placed before the learned Special Judge (POCSO), Bongaigaon and as such, he is also entitled for his default bail.

22) Accordingly, the petitioner, namely, **Nuruzzamal @Nur Jamal @Nurfan**, is granted default bail in said Manikpur P.S. Case No. 79/2024 on furnishing a bail bond of Rs. 50,000/- with 2(two) local sureties each of the like amount, one of which shall be a government employee, either Central or State Government, to the satisfaction of the learned Special Judge (POCSO), Bongaigaon subject to the conditions that the petitioner, named above —

- i)** shall appear before the concerned Investigating Officer of said Manikpur P.S. Case No. 79/2024, as and when he is required for necessary investigation of the case as well as till submission of the supplementary charge sheet in said Manikpur P.S. Case No. 79/2024;
- ii)** shall appear before the learned Special Judge (POCSO), Bongaigaon on the dates so fixed during the trial of the case and as and when he is required for his appearance in the said case before the learned Special Judge;
- iii)** shall not leave the territorial jurisdiction of Manikpur Police Station without obtaining prior written permission from the Investigating Officer of Manikpur P.S. Case No. 79/2024;
- iv)** shall not hamper with the investigation, or tamper with the evidence of the case;
- v)** 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;
- vi)** shall not threaten the victim girl or any other members of her family, by himself or

by anyone or by others, acting on his behalf;

vii) shall not involve himself in any criminal activities in the future.

23) Any violation of the aforesaid terms and conditions by the petitioner, namely, **Nuruzzamal @Nur Jamal @Nurfan**, the bail granted to him in said Manikpur P.S. Case No. 79/2024 shall stand automatically vacated.

24) This bail application accordingly stands allowed.

JUDGE

Comparing Assistant