

GAHC010217772024



2024:GAU-AS:12847

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

Case No. : Bail Appln./3189/2024

CHANMONI NAMASUDRA
S/O LATE KUMUD NAMASUDRA, R/O SAMAGURI, SONAPUR GAON, P.S.-
HOWRAGHAT, DIST- KARBI ANGLONG, ASSAM

VERSUS

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

2:MUKANDA NATH
S/O LT. RAMESH NATH
R/O 2 NO. SAMAGURI
P.S.-HOWRAGHAT
PIN-782482
DIST- KARBI ANGLONG
ASSA

Advocate for the Petitioner : A BORMAN, B SONOWAL

Advocate for the Respondent : PP, ASSAM, MR. C SARMAH (R2)

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17.12.2024

Heard Mr. A Borman, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam, for the State. Also heard Mr. Chinmoy Sarmah, learned

counsel for the informant/respondent No. 2.

2) Petitioner, namely, **Sri Chanmoni Namasudra**, Son of Late Kumud Namasudra, resident of Samaguri Sonapur Gaon, Police Station-Howraghat, District-Karbi Anglong has filed this application under Section 483 BNSS, 2023, praying for his bail in **Special (POCSO) Case No. 33/2024**, arising out of Howraghat Police Station Case No. 14/2024 under Section 376(3) of the IPC read with Section 6 of the POCSO Act, 2012, corresponding to G.R. No. 75/2024, in which, he was arrested on 22.04.2024 and is in custody since then.

3) As per the FIR dated 22.04.2024 lodged by the informant/respondent No. 2 on 20.04.2024 before the Officer-in-Charge of Howraghat Police Station, the case is that during his absence and absence of his wife while in their house, the petitioner entered in to their house and forcefully committed rape on his minor daughter, who is about 15 years old and further, petitioner threatened her that if she reveals about his said act to anyone she shall face the dire consequences. Because of such threatening by the petitioner, informant's minor victim girl did not disclose about the said fact to anyone. Later when she was found to be pregnant for 3 (three) months, on coming to know about the said incident, the informant immediately met the village headman and on his advice, lodged the said FIR against the petitioner, requesting the authority concerned of Howraghat Police Station to do the needful and to give justice to him and his family.

4) Accordingly, the said FIR of the informant was registered as Howraghat Police Station Case No. 14/2024, under Section 376(3) IPC read with Section 6 of the POCSO Act, 2012, corresponding to G.R. No. 75/2024.

5) After completion of the investigation of the case, charge-sheet in said Howraghat P.S. Case No. 14/2024 was submitted before the learned Special Judge (POCSO), Karbi Anglong, Diphu on 31.05.2024.

6) Petitioner stated that evidence of the informant and the victim girl have already been recorded by the learned Special Judge (POCSO) in the case and therefore, considering his detention since 22.04.2024 his prayer for bail should be considered.

7) It is also submitted by him that both, he and the victim girl are having love affair since long and that on attaining the marriageable age, he was to marry her.

8) Petitioner also stated that he is only 24 years old and shall abide by any terms and

conditions that may be imposed upon him by the Court consideration of his prayer for bail in the case.

9) Mr. B Sarma, learned Additional Public Prosecutor, Assam submitted that the statement of the minor victim girl recorded under Section 164 Cr.P.C. before the concerned Magistrate on 29.04.2024 as well as her evidence before the learned Special Judge (POCSO) on 22.10.2024, Karbi Anglong, Diphu, are found to be intact.

10) Mr. B Sarma, learned Additional Public Prosecutor, Assam further submitted that though the petitioner had a love relation with the minor victim girl, however, committing rape on a minor girl is a heinous offence and that the Hon'ble Supreme Court, in various cases, has laid down that relating to the said offence, like the one in the case in hand, bail application of the petitioner should not be considered during the trial of the case, in spite of recording of evidence of the victim and/or the informant, till the trial is completed.

11) Mr. C Sarma, learned counsel for the informant/respondent No. 2, on instruction, submitted that the informant does not have any objection, if the petitioner is released on bail.

12) By order dated 21.10.2024 the Court called for the records of said Special (POCSO) Case No. 33/2024 as well as the records of Howraghat Police Station Case No. 14/2024 from the Court of learned Special Judge (POCSO), Karbi Anglong, Diphu.

13) From the records of the case it is seen that medical examination of the minor victim girl was done on 22.04.2024 and she was found of having pregnancy of 10 weeks 3 days. Later, on her prayer and on being allowed by the learned Special Judge (POCSO), Karbi Anglong, Diphu, the pregnancy of the minor victim girl was medically terminated.

14) From the records of the case it is also seen that Police seized the Birth Certificate of the victim girl issued by the Registrar of Birth and Death Howraghat Block Primary Health Centre on 26.05.2009 with Registration No. 1318, wherein the date of Birth of the victim girl has been recorded as 06.05.2019. Considering the period of gestation of the baby in her womb to be of 10 weeks 3 days and her date of Birth as 26.05.2009, the victim girl was found to be of only 14 years 9 months in February 2024, at the time of the incident.

15) It is also seen that on 29.04.2024, statement of the minor victim girl was recorded by the learned Judicial Magistrate First Class, Karbi Anglong, Diphu under Section 164 CrPC.

16) From the records of the case, it is seen that on 16.07.2024 charge under Sections 376(3) IPC read with Section 6 of the POCSO Act, 2012 was framed against the petitioner in said Special (POCSO) Case No. 33/2024 arising out of Howraghat P.S. Case No. 14/2024, in which the petitioner claimed to be tried.

17) From the statement of the minor victim girl dated 29.04.2024, recorded under Section 164 CrPC by the learned JMFC, Karbi Anglong, Diphu as well as from her evidence before the learned Special Judge (POCSO), Karbi Anglong, Diphu dated 22.10.2024, it is seen that she implicated the petitioner of committing the alleged crime forcefully, in spite of her objection and resistance and also indicated that the petitioner used to visit their house in absence of her parents and thereby, on more than 5 to 6 occasions, he committed such illegal act with her, in spite of her objection and resistance and by threatening her, which made her pregnant.

18) From the case records, it is also seen that up to 22.10.2024, prosecution side has adduced evidence of 2 (two) prosecution witnesses and from the charge-sheet of the case, it is seen that 9 (nine) more prosecution witnesses are yet to be recorded, as on 22.10.2024.

19) Case records also reveal that both the informant as well as the minor victim girl were thoroughly cross examined by the defence.

20) Considering such materials in the case records and also considering the fact that said Special (POCSO) Case No. 33/2024 is progressing regularly, the Court is of the view that the detention of the petitioner, since 22.04.2024, cannot be considered for his bail in said Special POCSO Case No. 33/2024 arising out of Howraghat P.S. Case No. 14/2024.

21) Accordingly, this bail application of the petitioner, namely, **Sri Chanmoni Namasudra**, Son of Late Kumud Namasudra, in said **Special (POCSO) Case No. 33/2024** arising out of Howraghat P.S. Case No. 14/2024, pending before the Court of learned Special Judge (POCSO), Karbi Anglong, Diphu, stands **rejected**.

JUDGE

Comparing Assistant