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

Case No. : Bail Appln./3208/2024

KHALILUR RAHMAN
S/O.- SAKAD ALI @ GHURAWALA, R/O- GARAIMARI, P.S. AND DIST.
BONGAIGAON, ASSAM

VERSUS

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

2:KERAMAT ALI
S/O MEGHA MANDAL

R/O.- VILL- GORAIMARI
P.S. AND DIST. BONGAIGAON
ASSAM

PIN-783390

Advocate for the Petitioner : MR. M KHAN, MS J AKTAR

Advocate for the Respondent : PP, ASSAM, MS. M K BROWN, (AMICUS CURIAE, R2)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

09.12.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No.1 and Ms. M .K. Brown, learned Amicus Curiae representing the respondent No.2.

This application, filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for grant of bail to the accused/petitioner, who has been languishing in jail hazot since 22.05.2024 in connection with Special (P) Case No.76(BGN)/2024 arising out of Bongaigaon P.S. Case No.141/2024, registered under Sections 363/376 (2) (i) of IPC *read with* Section 6 of the POCSO Act which is pending before the Court of learned Special Judge, Bongaigaon.

The scanned copy of the Case Diary has been received and I have perused the same.

Mr. Khan, learned counsel for the petitioner, has submitted that the present petitioner is innocent and has not committed any offence as alleged against him. However, it is an admitted fact that the victim and the petitioner had a love relationship, and she eloped with him of her own consent and will. He further submits that out of ten witnesses, two witnesses have already been examined, namely P.W. Nos. 1 (victim) and 2 (informant), who are considered to be the vital witnesses in the prosecution's case. He further submits that the petitioner has been behind bars since 22.05.2024, and considering the length of detention undergone by the petitioner, he may be enlarged on bail.

He also submits that the two vital witnesses of the prosecution have already been examined, and considering the evidence on record, there cannot be any hampering or tampering of the other witnesses who are yet to be examined by the prosecution. He further submitted that the petitioner is a resident of the local area, and thus, there is no chance of absconding. Rather, he is ready and willing to appear before the Court on each and every date fixed.

On the other hand, the learned Additional Public Prosecutor, Mr. Baruah, has submitted that P.W.1, the victim in this case, has implicated the accused/petitioner, and even if she gave her consent, it cannot be considered valid as she has not attained the age of majority. Moreover, he submits that even though two witnesses have already been examined, the probability of tampering and hampering of the remaining witnesses cannot be denied at this stage. In support of his submission, he relies on a decision passed by the Hon'ble Supreme Court, reported in 2024 0 (Supreme) SC 1106, and emphasized particularly on paragraphs 15 and 16 of the said judgment, wherein it has held that "even after the examination of the victim, there may be an impact on the pending trial of the case, and the probability of tampering with the witnesses cannot be denied".

On the other hand, Ms. Brown, learned Amicus Curiae for respondent No. 2, submits that the victim has implicated the accused/petitioner, and from the evidence, it is seen that she was raped by the accused/petitioner, who is nine years older than her. She further submitted that although the victim had given her consent, at the relevant time of the incident, she was 15 years old, and hence her consent cannot be considered legal consent. Accordingly, she raised an objection and submitted that this is not a fit case to allow the

accused/petitioner to be granted bail at this stage.

Considering the submissions of learned counsels for both sides, I have perused the case record as well as the statement of the victim recorded under Section 164 of Cr. P.C., and also considering that the prosecution has already examined two witnesses, and the length of detention already undergone by the accused/petitioner, I am of the view that further custodial detention may not be required in the interests of justice. Hence, the accused/petitioner is granted bail.

Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, Bongaigaon, the accused/petitioner, namely, **Khalilur Rahman**, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;
- (ii) that the petitioner 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 him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioner shall not leave the jurisdiction of the learned Special Judge, Bongaigaon, without prior permission.

In terms of above, this bail application stands disposed of

JUDGE

Comparing Assistant