

GAHC010226342024



2024:GAU-AS:12849

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

Case No. : Bail Appln./3319/2024

NURJUL ISLAM ALIAS NORJUL ISLAM
S/O- ASFAR ALI, @ ASORAF ALI,
R/O- VILLAGE NO-2 SONAPUR,
SONAPUR BLOCK,
P.O- SONAPUR,
PIN-784160,
P.S- BIHPURIA,
LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP ASSAM

2:MD SHOHID ULLAH
S/O- LATE ANTAB HUSSAIN

VILLAGE- FATEHPUR
P.O- SONAPUR
PIN-784160

P.S- BIHPURIA
DIST-LAKHIMPUR
ASSA

Advocate for the Petitioner : RAVI SHANKAR MISHRA, MR. R K MAHANTA, MR. P BORDOLOI

Advocate for the Respondent : PP, ASSAM, MR. M ALAM (R-2)

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

ORDER

17.12.2024

Heard Mr. P Bordoloi, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State/respondent No. 1. Also heard Mr. M Alam, learned counsel for the informant/respondent No. 2.

2) Petitioner, namely, **Nurjul Islam @ Norjul Islam**, son of Asfar Ali @ Asoraf Ali, resident of village No. 2 Sonapur, Sonapur Block, Police Station-Bihpuria, District-Lakhimpur has filed this application under Section 483 BNSS, 2023, praying for his bail in **Special (POCSO) Case No. 105/2024**, arising out of Bihpuria Police Station Case No. 191/2023, registered under Section 366 of the IPC read with Section 4 of the POCSO Act, 2012, corresponding to G.R. No. 1025/2023, in which, he was arrested on 01.08.2024 and is in custody since then.

3) As per the FIR dated 01.11.2023 lodged by the informant/respondent No. 2 before the Bongalmora Police Outpost under Bihpuria Police Station of Lakhimpur district, the case is that on the night of 31.10.2023 around 01:00 am, his minor daughter, who was a student of Class-IX, was kidnapped from his house by the petitioner. Though the informant enquired about his minor daughter, but they failed to recover her. In the FIR filed dated 01.11.2023, the informant also indicated that the father of the petitioner, namely, Asfar Ali, helped the petitioner to kidnap his minor daughter and that said Asfar Ali was aware of the place where the petitioner confined his daughter.

4) Accordingly, the said FIR of the informant was registered as Bongalmora Out Post General Diary Entry No. 38 dated 03.11.2023, and thereafter it was registered as Bihpuria Police Station Case No. 191/2023 under Section 366 of the IPC read with Section 4 of the POCSO Act, 2012, corresponding to G.R. Case No. 1025/2023.

5) Mr. P Bordoloi, learned counsel for the petitioner submitted that the petitioner is a 20-year-old boy and is in custody since 01.08.2024 and that both the petitioner and the minor victim girl had love affair and on more than once, the victim girl had eloped with the petitioner, even after filing of the said FIR dated 01.11.2023.

6) Mr. P Bordoloi, learned counsel for the petitioner also submitted that considering the age of the petitioner and the length of his detention in custody since 01.08.2024, he should be

considered for his bail in said Special (POCSO) Case No. 105/2024, arising out of Bihpuria P.S. Case No. 191/2023 and that he shall comply by any terms and conditions as may be imposed on him by this Court for consideration of his bail.

7) Mr. P Bordoloi further submitted that considering the submissions made by the victim girl before police in her Section 161 CrPC statement as well as her medical examination report, it can be seen that the said victim girl did not sustain any injuries on her person, allegedly inflicted by the petitioner.

8) Mr. M Alam, learned counsel for the informant/respondent No. 2 submitted that the informant does not have any objection if the petitioner is released on bail, who is in custody since 01.08.2024, considering that his minor daughter has love affair with the petitioner.

9) Mr. B Sarma, learned Additional Public Prosecutor, Assam submitted that at the time of the alleged incident, the victim girl was a minor of 15 years old and that in her statement under Section 164 CrPC recorded by the learned Magistrate, the victim girl implicated the petitioner herein with regard to his involvement in the alleged crime.

10) Mr. B Sarma, learned Additional Public Prosecutor, Assam also submitted that after filing of the charge-sheet in said Bihpuria P.S. Case No. 191/2023, charges against the petitioner under Section 366 IPC read with Section 4 of the POCSO Act, 2012 were framed and 23.12.2024 is the next date fixed for recording of evidence of prosecution witnesses.

11) Mr. B Sarma, learned Additional Public Prosecutor, Assam further submitted that since the evidence of the minor victim girl, the concerned doctor and the concerned Investigating Officer of the case are yet to be recorded, the bail prayer of the petitioner, should not be considered by the Court at this stage.

12) By order dated 08.11.2024, the Court called for the case records of said Special (POCSO) Case No. 105/2024 along with the records of said Bihpuria P.S. Case No. 191/2023.

13) From the case records, it is seen that police have already seized the birth certificate of the minor victim girl dated 30.05.2007, issued by the Health Officer, Department of Health Services, Government of Assam, which indicates the date of birth of the victim girl as 12.05.2008. As such, on the date of the incident, i.e., on 01.11.2023, the victim girl was a minor of just 15 years and 5 months old.

14) From her statement after her recovery, recorded on 04.11.2023 under Section 164 CrPC by

the learned Judicial Magistrate First Class, Lakhimpur, North Lakhimpur, it is seen that the minor victim girl implicated the petitioner, stating that on the night of 30.10.2023, when she went to the washroom, the petitioner grabbed her from backside and forcefully took her away to Arunachal Pradesh by a four-wheeler and kept her in Arunachal Pradesh for the night, during which, the petitioner forcefully established physical relation with her, despite her objection and resistance. She, however stated that on 02.11.2023, the father of the petitioner brought her back from Itanagar and she was handed over to her parents.

15) Perusal of the case records also reveal that the petitioner, on 01.08.2024, surrendered before the Bihpuria Police Station in said Bihpuria P.S. Case No. 191/2023. Thereafter, the petitioner was taken into custody on 01.08.2024 itself and was accordingly produced before the Court of learned Sub-Divisional Judicial Magistrate (S), Lakhimpur, North Lakhimpur.

16) The learned Special Judge (POCSO), Lakhimpur, North Lakhimpur, rejected the bail petition of the petitioner in said Bihpuria P.S. Case No. 191/2023 and later, on completion of the investigation of the case, charge-sheet dated 31.08.2024 was filed in said Bihpuria P.S. Case No. 191/2023 that was placed before the Court of the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur on 09.10.2024.

17) It is seen from the records of the case that on 04.11.2024, charges under Section 366 IPC read with Section 4 of the POCSO Act, 2012 was framed against the petitioner in said Special (POCSO) Case No. 105/2024 arising out of Bihpuria P.S. Case No. 191/2023, which is presently pending before the Court of learned Special Judge (POCSO), Lakhimpur, North Lakhimpur.

18) It is also seen from the case records that the Court of learned Special Judge (POCSO), Lakhimpur, North Lakhimpur earlier fixed the said Special (POCSO) Case No. 105/2024 for evidence of prosecution witnesses. However, on 16.11.2024 and 28.11.2024, the prosecution witnesses remained absent and therefore, the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur issued summons to the prosecution witnesses of the case.

19) Perusal of the case records also reveal that the next date for evidence of the prosecution witnesses is fixed on 21.12.2024 and altogether, there are 10 (ten) prosecution witnesses named in the charge-sheet, including the minor victim girl, the informant, the Doctor concerned and the concerned Investigating Officer of said Bihpuria P.S. Case No. 191/2023.

20) Also perused the medical report of the minor victim girl, who was examined on 03.11.2023

by the Deputy Superintendent of Lakhimpur Medical College and Hospital, North Lakhimpur.

21) Considering the materials in the case records, including the statement of the minor victim girl recorded under Section 164 CrPC and also considering the fact that said Special (POCSO) Case No. 105/2024, which is pending before the Court of the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur is progressing, the Court is of the view that the detention of the petitioner in custody, since 01.08.2024, cannot be considered for his bail in said Special (POCSO) Case No. 105/2024, arising out of Bihpuria Police Station Case No. 191/2023, pertaining to his involvement in a heinous crime of committing sexual intercourse with a minor girl of 15 years and 5 months old.

22) Accordingly, this bail application of the petitioner, namely, **Nurjul Islam @ Norjul Islam**, Son of Asfar Ali @ Asoraf Ali, in said **Special (POCSO) Case No. 105/2024**, arising out of Bihpuria Police Station Case No. 191/2023, presently pending before the Court of the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur, stands **rejected**.

JUDGE

Comparing Assistant