

GAHC010229052024



2024:GAU-AS:11867

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

Case No. : AB/2949/2024

BHORAT BORBORA @ BHARAT BORBORA
S/O LATE HARI BORBORA
R/O BALIDUAR KARAYANI BHAKAT GAON
P.S. DERGAON
DIST. GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:PAPU BORA
S/O LATE NILAKANTA BORA
R/O NO. 2 JORAGURI
P.S. DERGAON
DIST. GOLAGHAT
ASSA

Advocate for the Petitioner : MR. M BISWAS, J SINGPHO,A GHOSAL

Advocate for the Respondent : PP, ASSAM, MR A B DUTTA (R-2),MR P S RAJA (R-2),MR B BORA (R-2)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29-11-2024

Heard Mr. M. Biswas, learned counsel for the petitioner and Ms. S. H. Bora, learned Additional Public Prosecutor, Assam for the opposite party No.1. Also heard Mr. B. Bora, learned counsel for the informant/opposite party No.2.

2. Apprehending his arrest, the petitioner, namely, **Bhorat Borbora @ Bharat Borbora**, son of late Hari Borbora, resident of Baliduar Karayani Bhakat Gaon, Police Station-Dergaon, District-Goalghat, has filed this application under Section 482 BNSS, 2023 seeking pre-arrest bail in **Dergaon Police Station Case No. 175/2024** under Section 74 BNS, 2023 read with Section 12 of the POCSO Act, corresponding to G.R. No.555/2024.

3. As per the FIR of the case dated 10.10.2024, lodged by the complainant/respondent No.2 that in the afternoon around 04:30 pm while his two young daughters, who are minors were returning home from the house of their maternal uncle, while reaching the shop of the FIR named accused, i.e., the petitioner, who is running the said shop at Joraguri Chariali, taking a room on rent, called him to enquire as to whether, he will go to celebrate Puja on the next day, the said accused pulled the complainants elder minor daughter inside his shop and tried to outrage her modesty by sexually assaulting her. Seeing this, complainant's younger minor daughter made hue and cry and ran to her home. Hearing such hue and cry of his younger minor daughter, the landlord of the shop came out of his house and rescued his elder minor daughter from the clutch of the accused. While, the accused sexually assaulted the complainant's minor daughter, the victim during push and pull, her kurti got torned. As such, by the said FIR, the complainant/respondent No.2 requested the Dergaon Police Station to take necessary action against the accused petitioner in

accordance with law. Accordingly, Dergaon Police Station Case No. 175/2024 under Section 74 BNS, 2023 read with Section 12 of the POCSO Act, corresponding to G.R. No.555/2024 was registered.

4. Mr. Biswas, learned counsel appearing for the petitioner submitted that the FIR does not disclose any ingredients of neither Section 74 BNS, nor, that of Section 12 of the POCSO Act.

5. It is also submitted by Mr. Biswas that the petitioner who is about 47 years old person infact asked the alleged victim girl not to waste time in talking over mobile phone, but to utilize her time in good productive works including studies while she came to the shop, but she did not accept his said advise and wrongly informed her parents as he objected of making such phone call to her friends and falsely implicated him in the case.

6. The complainant/respondent No.2, father of the victim girl has filed an affidavit today stating that he on reflecting the entire incident felt that he misread it and further the present petitioner is a father figure to her daughter. The complainant/respondent No.2 in his affidavit stated that he does not have any objection if the petitioner is released on pre-arrest bail in the concerned Dergaon P.S. Case, noted above.

7. Perused the case diary placed before the Court by Ms. Bora, learned Addl. PP as well as Section 183 BNSS statement of the minor victim girl recorded by learned Judicial Magistrate, First Class, Golaghat on 11.10.2024. Also perused the statements of the younger sister of the minor victim girl as well as the landlord of the said shop, who were present at the place of occurrence, recorded by police under Section 180 BNSS. Both of them in their 180 BNSS statements before police implicated the petitioner.

8. From the case diary it is seen that as per her birth certificate, the date of birth of the victim girl is 13.10.2008 and the incident occurred on 10.10.2024 and she was

less than 16 years on the date of the incident.

9. Considering the materials in the case diary and since the statements of the victim girl, already recorded under Section 183 BNSS, by the learned Judicial Magistrate, First Class and since the concerned Investigating Officer have already recorded the statements of the eye witnesses of the case, the Court is of the view that custodial detention of the petitioner, named above is not warranted for investigation of said Dergaon Police Station Case No. 175/2024.

10. Accordingly, it is provided that in the event of arrest of the petitioner, namely, **Bhorat Borbora @ Bharat Borbora**, son of late Hari Borbora, he shall be **released on bail** in said **Dergaon Police Station Case No. 175/2024** under Section 74 BNS, 2023 read with Section 12 of the POCSO Act, corresponding to G.R. No.555/2024 on furnishing a bail bond of Rs.50,000/- with two local sureties of the like amount, to the satisfaction of the concerned arresting authority on conditions that said petitioner, Bhorat Borbora @ Bharat Borbora – **(i)** shall appear before the Investigating Officer of said Dergaon Police Station Case No. 175/2024 on or before **06.12.2024** and thereafter, as and when he is required for necessary investigation of said Dergaon P.S. Case; **(ii)** shall not leave the territorial jurisdiction of said Dergaon Police Station, without obtaining prior written permission from the concerned Investigating Officer of said Dergaon P.S. Case No. 175/2024; **(iii)** shall not hamper with the investigation, or tamper with the evidence of the case; **(iv)** 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; **(v)** he shall not involve himself in any criminal activities and **(vi)** shall not threat the minor victim girl or anyone in her family by himself or by others, acting on his behalf.

11. Any violation of the aforesaid terms and conditions by the petitioner, Bhorat Borbora @ Bharat Borbora, the pre-arrest bail granted to him in said Dergaon P.S. Case No. 175/2024 shall stand automatically vacated.

12. This pre-arrest bail application accordingly stands disposed of to the extent above.

13. Return the case diary.

JUDGE

Comparing Assistant