

GAHC010232292023



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

Case No. : Bail Appln./3725/2023

PUSAN DAO
S/OLT. JAGANATH DAW
R/O NEOL GOAN, JORHAT,
P.O. KHAKANGURI
P.S. PULIBOR
DIST. JORHAT, ASSAM

VERSUS

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

2:SRI JITENDRA MISSONG
S/O SHRI POLURAM MISSONG

R/O NEOL GOAN

JORHAT
P.O.KHAKANGURI
PS. PULIBOR
DIST. JORHAT
ASSA

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : MR. K. K. PARASAR, ADDL. PP, ASSAM
MS. S. MEDHI, LAC FOR R-2

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 16.07.2024

Heard Mr. P. Kataki, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent No. 1 and Ms. S. Medhi, learned Legal Aid Counsel for the respondent No. 2.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail to the accused/ petitioner, who has been arrested in connection with Special Case No. 55/2021, under Section 376(3) of the Indian Penal Code *read with* Section 4(2) of the POCSO Act.

Scanned copy of the case record, along with Case Diary, has been received. Perused the same. Heard both sides.

It is submitted by Mr. Kataki, learned counsel for the petitioner, that the accused/petitioner is in custody since 29.04.2023 and more so, the victim as well as the informant of the case has already been examined by the learned Trial Court below on 12.05.2023. Further he submitted that in the medical

report, there is no injury found on the private parts of the victim while she was examined by the Doctor, though it was alleged that the accused/petitioner committed rape on her. He further submitted that considering his length of detention, the accused/petitioner may be enlarged on bail and being a local resident, he will regularly appear before the Court as and when the date is fixed.

In this context, Mr. Parasar, learned Additional Public Prosecutor, has submitted that admittedly the victim was a minor at the relevant time of incident and medical examination was done after 3-4 days of occurrence and thus, the probability of finding any injury on her private part is very less. In the same time, it is submitted that after examination of witnesses on 12.05.2023, no further witnesses are been examined by the learned Trial Court below till date.

Ms. S. Medhi, learned Legal Aid Counsel for the respondent No. 2, has submitted in that regard that as per the statement of the victim in her statement recorded under Section 164 Cr.P.C. as well as in her evidence, she stated that she was subjected to penetrative sexual assault and for which, she was having severe muscle cramp in her abdomen and was also bleeding. But in the medical evidence, there found no injury on her private part as she was examined only after 3-4 days of the occurrence. She further submitted that there are 9 (nine) numbers of witnesses to the occurrence and only 2 (two) witnesses are being examined and considering his previous conduct, there is every chance of absconding of the present accused/petitioner and accordingly, Ms. Medhi raised objection in allowing the accused/petitioner to go on bail at

this stage.

After hearing the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the case record as well as the Case Diary.

From the evidence of the victim as well as her statement recorded under Section 164 Cr.P.C., it is seen that she implicated the accused/petitioner and as per her, she was subjected to penetrative sexual assault by the accused/petitioner and for which, she was bleeding and was also having severe pain on her abdominal. But it cannot be denied that her medical examination was done only after 3-4 days of occurrence and hence, there may not be any proper medical report or Doctor might not found any injury on her private parts. Further it is seen that the incident had happened in the year 2021 and since then, the accused was absconding and subsequently he got arrested in connection with this case on 29.04.2023, when the charge was framed and on the very next date, the victim as well as the informant was examined by the learned Trial Court below. However, it is an admitted fact that after examination of 2 (two) witnesses, no other witnesses could be examined by the learned Trial Court below till date. But, considering the previous conduct of the accused/petitioner, it cannot be outrightly deny the possibility of his absconding or hampering or tampering with the other witnesses at this stage.

In view of above and also considering the entire aspects of the case, I do not find it appropriate to allow the accused/ petitioner to go on bail at this stage only considering his period of incarceration and accordingly, the present bail

application stands disposed of. However, the learned Court below is hereby directed to proceed with the case expeditiously by examining the other vital witnesses of the prosecution case.

In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant