

GAHC010233192023



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

**Case No. : Bail Appln./3728/2023**

BIMAN ROY  
S/O LATE DAYAL CHANDRA ROY  
VILL- NEW GOALPARA  
P.O. BALADMARI  
PS. GOALPARA  
DIST. GOALPARA, ASSAM

VERSUS

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

2:PAHI NATH  
D/O RAJU NATH  
VILL- BALITARA  
P.S. GHOGRAPAR  
DIST. NALBARI  
ASSA

**Advocate for the Petitioner : MR. D K KOTHARI**

**Advocate for the Respondent : MR. B. SHARMA(ADDL.PP, ASSAM)**

**BEFORE**  
**HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

**ORDER**

**Date : 08-01-2024**

- 1.** Heard Mr. Z. Kamar, learned Senior Counsel for the petitioner assisted by learned counsel Mr. Y. Kothari. Also heard Mr. B. Sharma, learned Addl. PP, Assam.
- 2.** Notice has been served to respondent No. 2 but the respondent No. 2 is not represented today.
- 3.** The petitioner namely, Biman Roy has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 06.07.2023 in connection with Special (P) Case No.203/2023 registered u/s 204, 342, 354B, 509 of the Indian Penal Code, 1860 read with Section 12, 14(1) of the Prevention of Children from Sexual Offences Act, 2012 (POCSO Act for short) and 66E of Information Technology Act, 2000, (IT Act for short).
- 4.** The petitioner had earlier prayed for bail and as charge-sheet was filed vide order dated 14.08.2023 in Bail Application No. 2646/2023, the petitioner was directed to approach the trial Court for bail. The petitioner then approached the trial Court for bail but vide order dated 28.08.2023 the petitioner's prayer for bail was rejected by the Special Judge, Nalbari. The allegation against the petitioner is that the victim eloped with a boy on 21.06.2023. The victim who was 17 years old was then apprehended and confined in the Goghrapar police station. On the same night, one SI of Goghrapar police station asked the victim to remove her garments to which the victim disagreed. Then the SI brandishing his stick demanded that the victim should remove her clothes. Terrified, the victim removed her clothes and then the SI clicked some obscene photographs and he also verbally abused the victim. The next morning the victim disclosed about the incident to another SI Liza Tai, but Liza Tai asked the victim not to divulge about the incident. Thereafter the victim went to the Child Welfare Committee (CWC for short) and she informed about the incident to the Child Welfare Committee but the members of the Child Welfare Committee threatened her by alleging that she had made false statements. In the evening the members of the Child Welfare Committee took the victim to Sakhi Ekak Centre. At around 7 PM, the victim became unconscious and then the members of the Sakhi took the victim to the Civil Hospital and the victim was referred to the Nalbari Medical College Hospital. When the victim regained consciousness, she tried to disclose about the incident to the members of the Sakhi, but Liza Tai came near her and whispered in her ear and threatened her not to divulge about the incident. They also threatened that there were CCTV cameras. The present petitioner was identified by the victim as the SI of the

Goghrapar police station who committed the alleged offence.

**5.** It is submitted on behalf of the present petitioner that the petitioner being a police personnel is not a flight risk. He will co-operate with the trial. It is also submitted that the allegation against the petitioner is absolutely false. The police station is under the surveillance of CCTV cameras but not a single CCTV footage could be recovered regarding such an incident of sexual assault. It is submitted that if the petitioner is admitted to bail, there would be no instance of hampering or tampering with the evidence. The victim herself was apprehended while eloping with another boy and when she was kept in the police station, she slammed a false case against the present petitioner. The petitioner is willing to abide by any bail conditions, if imposed upon him.

**6.** Charges have been framed against the petitioner u/s 204, 342, 354B, 509 of the IPC read with Section 12, 14(1) of the POCSO Act and Section 66E of the I.T. Act. The maximum punishment is only upto 7 years. The judgment passed by Hon'ble Supreme Court is ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 10 SCC 51***, categorised the offences alleged into Type-A category of offences, wherein bail of the accused has been categorically emphasised in relation to such category of offences. Moreover, it is a settled principle of law as iterated by Hon'ble the Supreme Court in the case of ***Sanjay Chandra v. CBI, 2011 Supreme (SC) 1096***, that "*while granting the bail the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail.*" It is also submitted that the victim has already been examined on 05.10.2023 and vide order dated 05.10.2023 the trial Court rejected the bail application on hypothetical and presumptive ground that releasing the petitioner on bail will further influence the fair trial of the case. With the above submissions the petitioner has prayed for bail.

**7.** The learned counsel for the petitioner has also relied on the decision of Hon'ble the Supreme Court in ***P. Chidambaram v. Directorate of Enforcement*** in Criminal Appeal No. 1831/2019 and decided on 04.12.2019 wherein it has been observed that:-

“25. Therefore, at this stage while considering the bail application of the appellant herein what is to be taken note is that, at a stage when the appellant was before this Court in an application seeking for interim protection/anticipatory bail, this Court while considering

the matter in Criminal Appeal No.1340/2019 had in that regard held that in a matter of present nature wherein grave economic offence is alleged, custodial interrogation as contended would be necessary and in that circumstance the anticipatory bail was rejected. Subsequently the appellant has been taken into custody and has been interrogated and for the said purpose the appellant was available in custody in this case from 16.10.2019 onwards. It is, however, contended on behalf of the respondent that the witnesses will have to be confronted and as such custody is required for that purpose. As noted, the appellant has not been named as one of the accused in the ECIR but the allegation while being made against the co-accused it is indicated the appellant who was the Finance Minister at that point, has aided the illegal transactions since one of the co-accused is the son of the appellant. In this context even if the statements on record and materials gathered are taken note, the complicity of the appellant will have to be established in the trial and if convicted, the appellant will undergo sentence. For the present, as taken note the anticipatory bail had been declined earlier and the appellant was available for custodial interrogation for more than 45 days. In addition to the custodial interrogation if further investigation is to be made, the appellant would be bound to participate in such investigation as is required by the respondent. Further it is noticed that one of the co-accused has been granted bail by the High Court while the other co-accused is enjoying interim protection from arrest. The appellant is aged about 74 years and as noted by the High Court itself in its order, the appellant has already suffered two bouts of illness during incarceration and was put on antibiotics and has been advised to take steroids of maximum strength. In that circumstance, the availability of the appellant for further investigation, interrogation and facing trial is not jeopardized and he is already held to be not a 'flight risk' and there is no possibility of tampering the evidence or influencing\intimidating the witnesses. Taking these and all other facts and circumstances including the duration of custody into consideration the appellant in our considered view is entitled to be granted bail. It is made clear that the observations contained touching upon the merits either in the order of the High Court or in this order shall not be construed as an opinion expressed on merits and all contentions are left open to be considered during the course of trial."

8. Per contra, the learned Addl. PP has raised serious objection stating that the petitioner

is a person of formidable character. His conduct clearly indicates that he is capable of influencing the other witnesses. The LCR reveals that on 05.10.2023 the victim was examined as a witness. It is further submitted by the learned Addl. PP that the petitioner had influenced the police personnel who were in the police station and the submission of the learned counsel for the petitioner that there was delay in lodgement of the FIR cannot be taken into consideration as the victim was under threat. The statement of the victim reflects that she was discouraged from divulging about the incident. The FIR itself reveals that the victim was discouraged from divulging about the incident. Many witnesses are yet to be examined. It is also been submitted by learned Addl. PP that CCTV footage could not be recovered as the room in which the offence was allegedly committed was not covered by CCTV footage and there was no CCTV surveillance in the room whereas all the other rooms in the police station have CCTV coverage.

9. The learned Addl. PP has relied on the decision of Hon'ble the Supreme Court in ***State of Bihar v. Rajballav Prasad @ Rajballav Bhai Pd*** decided on 24.11.2016 wherein it has been held and observed that:-

“41. Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: “witnesses are the eyes and ears of justice”. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in Zahira Habibullah's case as well.

42. Justifying the measures to be taken for witness protection to enable the witnesses to depose truthfully and without fear, Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 has remarked as under:

“11.3 Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise...Time has come for a comprehensive law being enacted for protection of the witness and members of his family.”

43. Almost to similar effect are the observations of Law Commission of India in its 198th Report (Report on 'witness identity protection and witness protection programmes'), as can be seen from the following discussion therein:

“The reason is not far to seek. In the case of victims of terrorism and sexual offences against women and juveniles, we are dealing with a section of society consisting of very vulnerable people, be they victims or witnesses. The victims and witnesses are under fear of or danger to their lives or lives of their relations or to their property. It is obvious that in the case of serious offences under the Indian Penal code, 1860 and other special enactments, some of which we have referred to above, there are bound to be absolutely similar situations for victims and witnesses. While in the case of certain offences under special statutes such fear or danger to victims and witnesses may be more common and pronounced, in the case of victims and witnesses involved or concerned with some serious offences, fear may be no less important. Obviously, if the trial in the case of special offences is to be fair both to the accused as well as to the victims/witnesses, then there is no reason as to why it should not be equally fair in the case of other general offences of serious nature falling under [the Indian Penal Code](#), 1860. It is the fear or danger or rather the likelihood thereof that is common to both cases. That is why several general statutes in other countries provide for victim and witness protection.” No doubt, the prosecutrix has already been examined. However, few other material witnesses, including father and sister of the prosecutrix, have yet to be examined. As per the records, threats were extended to the prosecutrix as well as her family members. Therefore, we feel that the High Court should not have granted bail to the respondent ignoring all the material and substantial aspects pointed out by us, which were the relevant considerations.

For the foregoing reasons, we allow this appeal thereby setting aside the order of the High Court. In case the respondent is already released, he shall surrender and/or taken into custody forthwith. In case he is still in jail, he will continue to remain in jail as a consequence of this judgment.

Before we part with, we make it clear that this Court has not expressed any observations on the merits of the case. Whether the respondent is guilty or not, of the charges framed against him, will be decided by the trial court on its own merits after analysing the evidence that surfaces on record during the trial.”

**10.** I have considered the submissions at the Bar with circumspection. I have also considered the peculiar nature of this case. The present petitioner is a police personnel and was posted in the particular police station as S.I., when he had committed the offence alleged against him. The evidence of only one witness has been recorded. Other witnesses are yet to be examined. I have considered the contents of the FIR which clearly reveals that the victim was prevented from divulging about the incident.

**11.** It is true that the statement of the victim has been recorded. It is also true that the accused being a police personnel will face the trial and he is not a flight risk. This case is not similar to the case of *P. Chidambaram* (supra). The appellant P. Chidambaram was already in custody and he being an elderly person of 74 years was also suffering from health issues and he was thereafter granted bail. The present petitioner having an overbearing personality may appear as a threat to the witnesses although he may not try to influence or tamper with the evidence.

**12.** At this nascent stage of trial I am constrained to reject the bail petition of the petitioner. Petition stands rejected at this stage.

- 13.** Send back the LCR, Case Diary and other documents forwarded from the trial Court.

**JUDGE**

**Comparing Assistant**