

GAHC010233312024



2024:GAU-AS:11359

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

Case No. : Bail Appln./3405/2024

ABDUL HUSSAIN
S/O LATE THAKUR ALI, R/O DAMPUR, P.S.- HAJO, DIST-KAMRUP, ASSAM

VERSUS

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

2:DULALI RANI DAS
W/O UTTAM DAS
R/O HOUSE NO. 21
PIYOLI PHUKAN NAGAR
CHANDMARI
GUWAHATI-781003
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. A CHAUDHURY, MR. N MAHAJAN, MR. D BORA, MR. P K DAS

Advocate for the Respondent : PP, ASSAM, MR. A KHAN (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 21.11.2024

Heard Mr. A. Chaudhury, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. A. Khan, learned counsel for the respondent No. 2/informant.

2. This is an application under Section 483 of the BNSS, 2023 praying for grant of bail to the accused/petitioner, who has been arrested in connection with Chandmari P.S. Case No. 266/2024, under Section 75/198 of the BNS, 2023 *read with* Section 10 of POCSO Act, 2012 *read with* Section 98(c)/99(5) of Assam Police Act.

3. Case Diary has been received. Perused the same. Heard both sides.

4. It is submitted by Chaudhury, learned counsel for the petitioner, that the present accused/petitioner is innocent and he has not committed any such offence as alleged in the F.I.R. The entire concocted case has been lodged only due to some departmental enmity with other officers and the case is lodged against the present petitioner who is at the verge of retirement. More so, the present petitioner has been dismissed from his service on the same day of lodging the F.I.R. instead of suspending him from service. He further submitted that as per the medical report, he was not found alcoholic at the time of his examination. He is behind the bar for last 27 days and hence, considering his

length of detention, he may be released on bail.

5. Mr. Baruah, learned Additional Public Prosecutor, submitted in this regard that from the statement made by the victim girl under Section 183 BNSS, it is seen that she had directly implicated the present accused/petitioner and explained as to how she was sexually assaulted by the accused/petitioner. He further submitted that the FSL Report is yet to be received as the blood sample, which was collected during investigation, has already been sent to the FSL for examination to ascertain as to whether the accused/petitioner was alcoholic at the relevant time of incident.

6. Mr. Khan, learned counsel for the respondent No. 2/informant/mother of the victim, submitted that the F.I.R. was lodged only due to misunderstanding as the accused/petitioner expressed his inability to write the F.I.R./Missing Report. But, subsequently, she came to know that due to his physical inability/visual impairment, the accused/petitioner could not write the F.I.R. and the case was lodged only due to misunderstanding and in the heat of the moment. But, at present, she has no objection if the accused/petitioner is released on bail.

7. After hearing the submissions made by the learned counsels for both sides and also on perusal of the Case Diary, it is seen that the victim had implicated the accused/petitioner in her statement made under Section 183 BNSS. However, considering the statement made by the informant that the F.I.R. was lodged only due to misunderstanding and also considering the length of detention already undergone by the accused/ petitioner, I find that further

custodial detention of the present accused/petitioner may not be necessary for the interest of investigation.

8. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge (POCSO), Kamrup(M) Guwahati, the accused/petitioner, namely, **Abdul Hussain**, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall fully co-operate in the investigation of the aforesaid P.S. Case and shall make himself available for interrogation by the Investigating Officer as and when called for;
- (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 (POCSO), Kamrup(M) Guwahati, without prior permission.

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

10. The Case Diary be sent back.

JUDGE

Comparing Assistant