

GAHC010242412024



2024:GAU-AS:12462

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

Case No. : Bail Appln./3526/2024

MD JALAL UDDIN @ JALAL UDDIN
S/O MD. SUKUR ALI
R/O VILL- GUNAIPANI
P.O. CHIRAKUTI
P.S. FAKIRGANJ
DIST. DHUBRI, ASSAM
PIN-783330

VERSUS

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

2:XXX
D/O LT. TAJUDDIN
VILL- RAHAMPUR
P.O. PALHAZI
P.S. BARPETA

DIST. BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. M U MONDAL, MR A ALIM SK,MR K ISLAM,MD. I H KHAN,MS. N NASRIN

Advocate for the Respondent : PP, ASSAM, R KHATUN (R-2)

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10.12.2024

Heard Mr. M U Mondal, learned counsel for the petitioner and Mr. B Sarma, learned

Additional Public Prosecutor, Assam for the State. Also heard Ms. Ruma Khatun, learned counsel for the informant/opposite party No. 2.

2) By this application filed under Section 483 of the BNSS, 2023, the petitioner, namely, **Md. Jalal Uddin @Jalal Uddin**, son of Md. Sukur Ali, resident of Village Gunaipani, P.S.-Fakirganj, District-Dhubri has prayed for his bail in **POCSO Case No. 27/2024**, arising out of Dillai Police Station Case No. 25/2024, registered under Section 376 (2)(n) of the IPC read with Section 6 of the POCSO Act, 2012, corresponding to G.R. No. 78/2024, in which, he was arrested on 24.04.2024 and is in custody since then.

3) It is submitted by Mr. M U Mondal, learned counsel for the petitioner that as the investigation of the case is complete, charge-sheet has been filed in the case and trial has already begun after framing of charge under Section 376(2)(n) of the IPC read with Section 6 of the POCSO Act, 2012, therefore, the petitioner should be considered for his bail in said POCSO Case No. 27/2024, pending before the Court of learned Special Judge (POCSO), Karbi Anglong, Diphu.

4) It is also submitted that the evidence of the victim girl as PW-1 and that of her mother as PW-2 have already been recorded by the learned Special Judge and that both of them have been thoroughly cross-examined by the defence. As such, it is submitted on behalf of the petitioner that he should be considered for his bail in said POCSO Case No. 27/2024.

5) It is further submitted that on considering the case for his bail in said POCSO Case No. 27/2024, the petitioner shall abide by any terms and conditions that may be imposed upon him by the Court while granting bail.

6) Ms. Ruma Khatun, learned counsel for the informant/opposite party No. 2 submitted that the evidence of the victim girl has already been recorded by the Court of the learned Special Judge (POCSO), Karbi Anglong, Diphu and she was also cross-examined by the defence and as such, she left it to the Court to decide this bail application by the petitioner.

7) Perused the case record that was called for by the Court on 21.11.2024.

8) It is seen that after she was rescued by the father of her boyfriend, who was younger to her, from the army camp under construction at Lahorijan and the said father who brought both his son and the victim to the Dillai Police Station, the victim minor girl herself lodged the FIR of the case before the Officer-in-Charge on 23.04.2024, alleging that the petitioner forcefully

committed sexual intercourse with her in spite of her objection and resistance. Accordingly, said FIR was registered as Dillai Police Station Case No. 25/2024 under Section 376 (2)(n) IPC read with Section 6 of the POCSO Act, 2012.

9) It is seen from the records that as per school certificate, the date of birth of the victim girl is 02.05.2007 and as such, at the time of the incident, the victim was a minor girl of 17 years 3 months.

10) From the case record, it is seen that in her statement under Section 164 Cr.P.C. recorded by the learned Judicial Magistrate First Class, Karbi Anglong, Diphu on 25.04.2024 as well as in her evidence recorded by the learned Special Judge (POCSO), the minor victim girl implicated the petitioner, who, in spite of her objection and resistance, forcefully committed sexual intercourse with her and also sexually assaulted her.

11) It is also seen from the case records that as per the charge-sheet of the case dated 12.05.2024 there are 10 (ten) named prosecution witnesses out of which prosecution has adduced evidence of 2 (two) of its witnesses and that the trial of said POCSO Case No. 27/2024 is progressing.

12) Considering the involvement of the petitioner in the heinous crime of rape of the minor girl and as the trial of the case is progressing, therefore, the detention of the petitioner, since 24.04.2024, cannot be considered for his bail in said POCSO Case No. 27/2024.

13) Accordingly, this bail application of the petitioner, **Md. Jalal Uddin @Jalal Uddin**, son of Md. Sukur Ali, in said **POCSO Case No. 27/2024**, arising out of Dillai Police Station Case No. 25/2024, presently pending before the Court of learned Special Judge (POCSO), Karbi Anglong, Diphu, stands rejected.

JUDGE

Comparing Assistant