

GAHC010242872024



2024:GAU-AS:12984

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

Case No. : Bail Appln./3523/2024

MOMINUR HOQUE SK
S/O MD. SUMAN ALI SK.
R/O VILL- NO. 2 DAWAGURI
P.S. GOSSAIGAON
DIST. KOKRAJHAR, ASSAM

VERSUS

MD. ABBAS ALI SHEIKH AND ANR
S/O LATE SUKKUR ALI SHEIKH
R/O VILL- 2 NO. SERFANGURI, P.S. GOSSAIGAON, DIST. KOKRAJHAR,
ASSAM, PHONE NO. 84718-17056.

2:THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP
ASSA

Advocate for the Petitioner : MR SARFRAZ NAWAZ, SAMIM RAHMAN,MR S A
BARBHUYAN,MS SURAYA RAHMAN,MR. SURAJIT DAS,MR A W AMAN

Advocate for the Respondent : PP, ASSAM, MR. Z ISLAM (R-1)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-12-2024

Heard Mr. A. W. Aman, learned counsel for the petitioner and Mr. Z. Islam, learned counsel for the informant/opposite party No.1. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam for State/opposite party No.2.

2) The petitioner, namely, **Mominur Hoque Sk**, son of Md. Surman Ali Sk, resident of Village No.2 Dawaguri, Police Station-Gossaigaon, District-Kokrajhar has filed this application under Section 483 BNSS, 2023, seeking bail in **Gossaigaon Police Station Case No. 161/2024** corresponding to G.R. No. 181/2024 registered under Section 376 IPC, read with Section 6 of the POCSO Act, 2012, wherein he was arrested on 09.10.2024 and is in custody since then.

3) The informant/respondent No.1 on 01.10.2024 lodged a written Ejahar before the Officer-in-Charge of Gossaigaon Police Station alleging that the petitioner since last one year has been inducing his minor daughter, aged about 16 years of age, studying in Class-X, on the pretext of having love affair, used to meet her in the road and other places and thereby affected her studies. In the said written Ejahar, it is also alleged by the informant that without his knowledge, about 6-7 months ago, the petitioner used to pick up his minor daughter and once he took her to his relative's house, where he forcefully had physical relation with her inspite of her resistance and objection and video-graphed such act of physical relation with her. On coming to know about the meeting of his minor daughter with the petitioner, the informant met the

guardians of the petitioner and informed them about the incident and on instruction of the guardians of the petitioner, he stopped meeting the informant's minor daughter. But sadly, the petitioner over phone shared some obscene photographs in social media, of his minor daughter that he had video-graphed with her, which is likely to cause irreparable loss and threat to his minor daughter. As such, by the said written Ejahar, the informant requested the authorities of Gossaigaon Police Station to take necessary action in that regard. Said written Ejahar of the informant was registered as Gossaigaon P.S Case No. 161/2024 corresponding to G.R. No. 181/2024 under Section 376 IPC, read with Section 6 of the POCSO Act, 2012.

4) The petitioner was arrested on 09.10.2024 and was produced before the learned Special Judge (POCSO), Kokrajhar on 09.10.2024 itself.

5) Mr. Aman, learned counsel for the petitioner placing the forwarding report of the concerned Investigating Officer of said Gossaigaon P.S Case No. 161/2024 dated 09.10.2024 (Annexure-2 to this petition) submitted that the petitioner has been shown as 18 years of age in the said forwarding report and that the FIR itself discloses that for about a year he had a love relation with the victim girl and further, that the alleged incident occurred about 6-7 months ago from the date of filing of the Ejahar. As such, the petitioner himself was a minor at the time of the incident and that since 09.10.2024, he is in custody for more than 70 days and should be released on bail, considering his age and detention in custody.

6) Mr. Aman, learned counsel also submitted that the mobile phone of the petitioner has already been seized by police and as such, petitioner's further custodial detention in said Gossaigaon P.S Case No. 161/2024 is not required.

7) Mr. B. Sarma, learned Additional Public Prosecutor, Assam submitted that the case diary including the statement of the minor victim girl recorded under Section 183 BNSS reveals sufficient incriminating materials against the petitioner.

8) Mr. Islam, learned counsel for the informant/opposite party No.1 submitted that except praying for bail, the petitioner did not place any other material to consider his bail application.

9) Perused the case diary placed before the Court today by Mr. B. Sarma, learned Additional Public Prosecutor, Assam.

10) It is seen that police have already seized the original birth certificate of the minor victim girl, issued by the Superintendent, RNB Civil Hospital, Gossaigaon vide Registration No. 1173/2008 issued on 14.08.2005, showing her date of birth as 15.06.2008.

11) On perusal of the statement of the victim girl recorded by the learned Judicial Magistrate, First Class, Kokrajhar on 04.10.2024, it is seen that the minor victim girl implicated the petitioner as to how he had forceful physical relation with her inspite of her objection and resistance about 3 to 4 months ago from the date of recording of such statement before the learned Magistrate. In her statement the minor victim girl also stated that how the petitioner threatened her, compelling her to be nude and video-graphed such act of physical relation with him and threatened her continuously of uploading such video of his sexual relation with her, if she discloses the said act or does not keep any relation with him. In her statement before the learned Magistrate, the minor victim girl also stated that on 01.10.2024, the petitioner uploaded such obscene photographs of her which the petitioner had recorded, to others and

one of her neighbour showed those obscene photographs of her forwarded by the petitioner.

12) Considering the date of birth of the minor victim as 15.06.2008, on the date of the lodging of the FIR on 01.10.2024, the victim was 16 years 3 months old and if the incident is considered to have occurred 3-4 months back as per the statement of the victim girl, she was found to be less than 16 years of age.

13) Though petitioner claimed to be of 18 years of age on the basis of forwarding report of the concerned Investigating Officer of the case and thereby claimed that he was a minor of less than 18 years on the date of the incident. But the petitioner did not place anything before the Court to prima facie satisfy that he is of 18 years of age, as he mentioned before the police after he was apprehended on 08.10.2024. Police accordingly recorded his age as 18 years. There was nothing before the Court to show that petitioner is more or less 18 years of age at the time of his arrest.

14) Case diary also reveals that petitioner fled away from his house and only through source person, petitioner's existence at particular location was found to be correct and he was apprehended from a faraway place, namely, Telipara on 08.10.2024.

15) Considering such materials in the case diary, though the petitioner's mobile phone has already been seized and forwarded to the FSL for necessary investigation, the Court is not inclined to grant bail to the petitioner in said Gossaigaon P.S Case No. 161/2024 considering his detention in custody since 09.10.2024, finding his involvement in the alleged crime with the minor victim girl.

16) Accordingly, this bail application of the petitioner, namely, **Mominur**

Hoque Sk, son of Md. Surman Ali Sk, in said Gossaigaon P.S. Case No. 161/2024 **stands rejected**.

JUDGE

Comparing Assistant