

GAHC010243262024



2024:GAU-AS:12911

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

Case No. : Bail Appln./3536/2024

SORIFUL ISLAM @ MD SHORIFUL ISLAM @ RAHUL
S/OLT. AKKAS ALI
VILL- NO. 2 PALASHGURI
P.S. GOSSAIGAON
DIST. KOKRAJHAR, ASSAM

VERSUS

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

2:SUKESWARI RAY
W/O SRI NABIN RAY
D/O SRI FULKR. RAY
VILL- NO. 1 MATIAPARA
P.S. GOSSAIGAON
DIST. KOKRAJHAR
ASSAM
PIN-78336

Advocate for the Petitioner : MD. A HUSSAIN, MR. T ISLAM

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

18/12/2024

Heard Mr. A Hussain, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State respondent.

2. It is seen that notice has already been duly served on the informant/opposite party No. 2 on 01.12.2024. However, the informant/opposite party No. 2 did not appear in the matter.

3. This application under Section 483 of BNSS, 2023 has been filed by the petitioner, namely, **Soriful Islam @ Md. Shoriful Islam @ Rahul**, son of Late Akkas Ali, resident of Village-No. 2 Palashguri, P.S. Gossaigaon, District-Kokrajhar, seeking bail in **Special (POCSO) Case No. 137/2024** arising out of Gossaigaon P.S. Case No. 70/2024 under Section 376(3) IPC read with Section 4 of POCSO Act corresponding to G.R. No. 76/2024, wherein he was arrested on 03.05.2024 and is in custody since then.

4. As per the FIR dated 02.05.2024 lodged by the informant/opposite party No. 2, the case is that her minor daughter of 13 years old was found missing from home since 7:00 pm on 01.05.2024 and she returned home around 8:30 at night. When she was enquired about the matter, the victim girl informed that the petitioner gagged her mouth and pulled her to the river side and forcefully committed rape on her. By the said Ejahar submitted before the Officer-in-Charge of Sapkata Outpost under Gossaigaon Police Station, the informant/opposite party No. 2 requested the authority to arrest the accused person of the case and to take action in accordance with law indicating that the informant resides at Bongaigaon, who is a daily wage labour and as she has to lodge the FIR after returning from Bongaigaon, there was a short delay in filing the FIR of the case to that extent. Said FIR of the informant was accordingly registered as Sapkata Outpost G.D. Entry No. 26 dated 02.05.2024, which was subsequently registered as Gossaigaon P.S. Case No. 70/2024 under Section 376(3) IPC read with Section 4 of POCSO Act.

5. After completion of the investigation of the case, police submitted the charge-sheet in said Gossaigaon P.S. Case No. 70/2024 on 30.05.2024 against the petitioner under Section 376(3) IPC read with Section 4 of POCSO Act.

6. It is submitted on behalf of the petitioner that in the meanwhile the evidence of the victim

girl, informant and two other prosecution witnesses have already been recorded. As such, considering his detention in custody since 03.05.2024, the petitioner should be released on bail in said Special (POCSO) Case No. 137/2024, presently pending before the Court of learned Special Judge (POCSO), Kokrajhar.

7. Perused the records of the case that was called for by order dated 22.11.2024.

8. It is seen that police have seized the original birth certificate of the victim girl that was issued by the authorities of R.N.B. Civil Hospital, Gossaigaon, Kokrajhar on 29.07.2010 indicating the date of birth of the victim girl as on 20.06.2010. Considering the same, the victim girl was found to be of 13 years 10 months on the date of the incident, i.e., on 01.05.2024, a minor in age.

9. In her statement recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate, First Class, Kokrajhar on 03.05.2024, the minor victim girl implicated the petitioner, who was serving as a mason while constructing a school nearby the house of the informant. The minor victim girl also stated that in the evening of 01.05.2024, while there was none in her house, around 7:00 pm, the petitioner came to her house and gagged her mouth and forcefully took her to the nearby river side wherein he committed rape on her in spite of her objection and resistance and left her alone at night by the river side and that later she returned home alone and informed everything to her maternal grandmother with whom she and her sister use to reside as her mother works at Bongaigaon.

10. Also perused the medical report of the victim.

11. From the records of the case, it is seen that charge-sheet of the case dated 30.05.2024 was placed before the learned Special Judge (POCSO), Kokrajhar on 12.06.2024 and accordingly, the cognizance of the offence under Section 376(3) IPC read with Section 4 of POCSO Act was taken against the petitioner in said Gossaigaon P.S. Case No. 70/2024. Thereafter, said Gossaigaon P.S. Case No. 70/2024 was registered as Special (POCSO) Case No. 137/2024 before the Court of learned Special Judge (POCSO), Kokrajhar. On 09.07.2024, charge under Section 4 of the POCSO Act was framed against the petitioner to which the petitioner pleaded not guilty and accordingly, trial of the case begun.

12. From the case record, it is also seen that upto 05.11.2024 evidences of 4 prosecution witnesses including the victim girl and the informant have been recorded, who were thoroughly cross-examined by the defence. As per the charge-sheet of the case, there are 10 prosecution witnesses out of which 4 have already been examined by the prosecution and crossed by the defence.

13. Considering the materials in the case record including the evidence of the victim girl and the informant, her medical report as well as her 164 Cr.P.C. statement recorded by the learned Judicial Magistrate, First Class, Kokrajhar on 03.05.2024 and finding that the trial of the said Special (POCSO) Case No. 137/2024, pending before the Court of learned Special Judge (POCSO), Kokrajhar is progressing well, the Court is of the view that the detention of the petitioner in custody since 03.05.2024 cannot be considered for his bail in said Special (POCSO) Case No. 137/2024 arising out of Gossaigaon P.S. Case No. 70/2024 under Section 4 of the POCSO Act.

14. Accordingly, this bail application of the petitioner, **Soriful Islam @ Md. Shoriful Islam @ Rahul**, in said Special (POCSO) Case No. 137/2024 arising out of Gossaigaon P.S. Case No. 70/2024, presently pending before the Court of learned Special Judge (POCSO), Kokrajhar, stands rejected.

JUDGE

Comparing Assistant