

GAHC010254442023



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

Case No. : Bail Appln./4183/2023

DILIP DAS
S/O LT. BOLORAM DAS
R/O VILL- LANKESWAR NABASUDRAPARA, P.S. JALUKBARI,
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE LD. PP, ASSAM

2:BIKASH ADHIKARI
S/O LATE HARIRAM ADHIKARI
VILL- HARIPUR

P.S. TAMAHAHAR
DIST. DHUBRI

MOBILE NO. 600300894

Advocate for the Petitioner : MR. A BHATTACHARYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 23-02-2024

Heard Mr. A. Bhattacharjya, learned counsel for the accused. Also heard Mr. R. J. Barua, learned Addl. P.P. for the State respondent and Mr. S. K. Sarkar, learned

counsel for the respondent No.2.

This application, under Section 439 Cr. P.C. is preferred by accused, Dilip Das, who has been languishing in jail hajot since 22.1.2023, in connection with Special (Spl) Case No. 54/2023, under Section 6 of POCSO Act R/W Sec. 376 IPC pending before the Court of learned Special Judge, POCSO, Kamrup(M), Guwahati for grant of bail.

The above noted case has been registered on the basis of an FIR lodged by one Bikash Adhikari on 22.1.2023.

The essence of allegation made in the FIR dtd. 22.1.2023 is that on 22.1.2023 at about 10 AM in the morning accused Dilip Das committed rape upon his minor daughter, namely, Smt. 'X' (name withheld) aged ten years by luring and taking her to one of the building

Mr. Bhattacharyya, learned counsel for the accused submits that after completion of investigation the I.O has already filed charge sheet and learned Court below after taking cognizance upon the said charge sheet, framed charge against the accused and examined five witnesses out of seven witnesses cited in the charge sheet.

Mr. Bhattacharya learned counsel submits that the accused is behind the bar for 396 days and that for last three months no witnesses have turned up and therefore, it is contended to allow the petition, considering the length of detention of accused in jail hajot.

On the other hand, Mr. Boruah, learned Addl. P.P. and Mr. Sarkar, learned counsel for the respondent No.2 opposed the petition. Mr. Sarkar submits that the age of the victim girl is 10 years at the material point of time and that the case is at the last stage and if the accused is enlarged on bail at this stage, he will influenced the witnesses and therefore, it is contended to dismiss the

petition

Having heard the submission of learned Advocates of both the parties, I have gone through the petition and the documents placed on record and also gone through the scanned copy of the record received from the learned Court below. It appears that the learned Court below had framed charge against the accused u/s 376 IPC read with Section 6 of the POCSO Act on 7.6.2023, and further it appears that the learned Court below has thereafter examined five witnesses out of seven witness cited in the charge sheet. It appears that for last three months, no witnesses have turned up. But, having regards to the age of the victim and nature and gravity of the offence and punishment prescribe for the same, this Court is not inclined to extend the privilege of bail to the accused at this stage. Accordingly, the petition stands dismissed.

However, the learned Court below is directed to conduct day to day trial by taking recourse to Section 309(1) Cr.P.C and to complete the same at an earliest stage, without being influenced by any of the observation made herein above, which is made only for the purpose of disposing of this bail application.

JUDGE

Comparing Assistant