

GAHC010256712024



2024:GAU-AS:12442

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

Case No. : I.A.(Crl.)/1200/2024

SAMSUL KHAN
S/O EAKABABAR KHAN @ EKABBAR KHAN R/O VILL- BAR AGDIA,
NAGAON, P.S. BARPETA, DIST. BARPETA, ASSAM

VERSUS

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

2:JAHANARA BEGUM
W/O LT. PHUL MAHAMAD ALI R/O NARBAM
LALMATI
BASISTHA
P.S. BASISTHA
GHY- 29
DIST. KAMRUP (M)
ASSAM PHONE NO. 9707297566

2:JAHANARA BEGUM
KAMRUP METRO
ASSA

Advocate for the Petitioner : MS MAYURI DAS,

Advocate for the Respondent : PP, ASSAM,

Linked Case : Bail Appln./3516/2024

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Advocate for : MR. J AHMED
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09-12-2024

Heard Mr. J Ahmed, learned counsel for the applicant/petitioner and Mr. M P Goswami, learned Additional Public Prosecutor, Assam for the State/opposite party No. 1.

2. Petitioner, namely, **Samsul Khan**, Son of Eakababar Khan @ Ekabbar Khan, resident of village Bar Agdia, Police Station-Barpeta, District-Barpeta is an FIR named accused in Garchuk

Police Station Case No. 296/2024 under Sections 331(5)/75(1)(II)/76 BNS, 2023 read with Section 8 of the POCSO Act, 2012, corresponding to G.R. No. 5632/2024, in which he was arrested on 23.09.2024.

3. On 14.11.2024 he filed an application under Section 483 BNSS, 2023 praying for his regular bail in said Garchuk Police Station Case No. 296/2024.

4. Finding that Charge-sheet was not filed in the said Garchuk P.S. Case No. 296/2024 till 21.11.2024, considering his detention since 23.09.2024 for more than 61 days, the Court by order dated 21.11.2024 passed in said Bail Appln. No. 3516/2024 granted default bail to the petitioner in said Garchuk P.S. Case, noted above, with the following observations and directions —

“5) Accordingly, the petitioner, namely, **Samsul Khan**, is granted default bail in said Garchuk P.S. Case No. 296/2024 on furnishing a bail bond of Rs. 50,000/- with 2(two) local sureties each of the like amount, one of which shall be a government employee, either Central or State Government, to the satisfaction of the learned Special Judge (POCSO), Kamrup (Metro), Guwahati, subject to the conditions that the petitioner, named above —

- i) shall appear before the concerned Investigating Officer of said Garchuk P.S. Case No. 296/2024, as and when he is required for necessary investigation of the case;
 - ii) shall appear before the learned Special Judge (POCSO), Kamrup (Metro), Guwahati on the dates so fixed during the trial of the case and as and when he is required for his appearance in the said case before the learned Special Judge;
 - iii) shall not leave the territorial jurisdiction of Garchuk Police Station without obtaining prior written permission from the Investigating Officer of Garchuk P.S. Case No. 296/2024;
 - iv) shall not hamper with the investigation, or tamper with the evidence of the case;
 - v) 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 them from disclosing such facts to the Court or to any police officer;
 - vi) shall not threaten the victim girl or any other members of her family, by himself or by anyone or by others, acting on his behalf;
 - vii) shall not involve himself in any criminal activities in the future.
- 6) Any violation of the aforesaid terms and conditions by the petitioner, namely,

Samsul Khan, the bail granted to him in said Garchuk P.S. Case No. 296/2024 shall stand automatically vacated.”

5. It is stated that when the applicant on obtaining default bail approached the Court of the learned Special Judge (POCSO), Kamrup (Metro), Guwahati in said Garchuk P.S. Case No. 296/2024 for his bail, then only he came to know that on the prayer of the Investigating Officer of said Garchuk P.S. Case, the learned Special Judge (POCSO), Kamrup (Metro), Guwahati by order dated 06.11.2024 added Section 6 of the POCSO Act, 2012 in said Garchuk P.S. Case No. 296/2024, which the applicant was not aware of till he approached the learned Court of Special Judge (POCSO), Guwahati, noted above.

6. The applicant also submitted that after coming to know of adding of Section 6 of the POCSO Act, 2012 in said Garchuk P.S. Case No. 296/2024, he did not submit bail bond nor pressed for his bail as been granted to him earlier by this Court by order 21.11.2024 in Bail Appln. No. 3516/2024

7. Hence, the applicant, i.e., the FIR named accused of Garchuk P.S. Case No. 296/2024 has filed this interlocutory application praying to recall the order dated 21.11.2024 passed by this Court earlier in Bail Appln. No. 3516/2024 that was preferred by him.

8. Mr. M P Goswami, learned APP, Assam does not have any objection with regard to such prayer of the applicant/FIR named accused of said Garchuk P.S. Case No. 296/2024.

9. After hearing the learned counsels for the parties and considering the entire aspect of the matter and for the reasons, noted above, it is seen that on adding of Section 6 of the POCSO Act, 2012 by the learned Court of Special Judge (POCSO), Kamrup (Metro), Guwahati in Garchuk P.S. Case No. 296/2024 on 06.11.2024 on the prayer of the Investigating Officer of the said case, the applicant/petitioner was not entitled for his default bail in said Garchuk P.S. Case No. 296/2024 on 21.11.2024.

10. Accordingly, the order dated 21.11.2024 passed by this Court earlier in said Bail Appln. No. 3516/2024 preferred by the applicant as petitioner is hereby recalled.

11. With the above observation and directions, this Interlocutory Application stands allowed to the extent above.

JUDGE

Comparing Assistant