

GAHC010267452024



2024:GAU-AS:13006

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

Case No. : Bail Appln./3853/2024

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)
ASSA

Advocate for the Petitioner : MR. J AHMED, MS M DAS,MR. S MOLLAH

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

19/12/2024

Heard Mr. J Ahmed, learned counsel for the petitioner and Mr. M P Goswami, learned Additional Public Prosecutor, Assam for the State respondent.

2. The petitioner, namely, **Samsul Khan**, son of Eakababar Khan @ Ekabbar Khan, resident of Village-Bar Agdia, Nagaon, P.S. Barpeta has filed this application under Section 483 BNSS, praying for his bail in **Garchuk Police Station Case No. 296/2024** registered under Sections 331(5)/75(1) (II)/76 BNS read with Section 8 of the POCSO Act with added Section 6 of the POCSO Act, corresponding to G.R. No. 5632/2024 in which he was arrested on 23.09.2024 and is in custody since then.

3. As per the FIR dated 22.09.2024 filed before the Garchuk Police Station lodged by the informant/opposite party No. 2, the case is that her daughter is residing with her grandmother at Milijuli Path, Boragaon. On 22.09.2024 when her grandmother went to the paddy field to leave the cows in it, the petitioner came to the house and grabbed her minor daughter, who was alone in the house at that time, grabbed her from backside, covering her face took her inside the room and tried to commit physical relation with her. After some resistance by her, said minor daughter could manage to get away from the clutch of the petitioner and informed her grandmother. As such, the informant lodged the FIR praying before the authority to enquire into the matter and punish the accused person and do justice to them. Accordingly, Garchuk P.S. Case No. 296/2024 was registered.

4. The petitioner was arrested on 23.09.2024 and was produced before the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati.

5. Initially Section 6 of the POCSO Act was not registered in said Garchuk P.S. Case No. 296/2024. The petitioner earlier filed Bail Appln. No. 3516/2024 in said Garchuk P.S. Case No. 296/2024.

6. By order dated 21.11.2024, the petitioner was released in said Garchuk P.S. Case No. 296/2024 on default bail as police did not file the charge-sheet within the statutory period of 60 days from the date of first remand of the petitioner on 23.09.2024. When the petitioner approached the Court of learned Special Judge (POCSO), Kamrup (Metro), Guwahati for his default bail, he could

come to know of adding of Section 6 of the POCSO Act in said Garchuk P.S. Case No. 296/2024 by order dated 06.11.2024 passed by learned Special Judge (POCSO), Kamrup (Metro), Guwahati.

7. Thereafter, the petitioner filed an Interlocutory application being I.A. (Crl.) No 1200/2024 in said Bail Appln. No. 3516/2024 stating that he was not aware of adding of Section 6 of the POCSO Act in the said Garchuk P.S. Case No. 296/2024 on 06.11.2024 as he was in custody since 23.09.2024. As Section 6 of the POCSO Act, 2024 has been added in said Garchuk P.S. Case No. 296/2024, the mandatory period of detention of the petitioner is 90 days from the date of his first remand dated 23.09.2024. As such, by order dated 09.12.2024 in said I.A. (Crl.) No 1200/2024 in Bail Appln. No. 3516/2024, preferred by the petitioner, this Court recalled its earlier order dated 21.11.2024 passed in Bail Appln. No. 3516/2024, by which default bail was granted to the petitioner.

8. Now, the petitioner has filed this bail application. On 17.12.2024 the Court called for the status report of said Garchuk P.S. Case No. 296/2024.

9. Today, Mr. Goswami, learned Additional Public Prosecutor, Assam has placed the status report of said Garchuk P.S. Case No. 296/2024 submitted by the Investigating Officer of the case dated 18.12.2024.

10. From the said status report dated 18.12.2024, it is seen that the victim girl is only of 14 years and she in her statement before the learned Magistrate under Section 183 BNSS stated that earlier on several times the petitioner forcefully made sexual relation with the victim girl inspite of her objection and resistance by threatening her, due to which the minor victim became pregnant.

11. From the status report of the case, it is also seen that after such medical report of the minor victim girl, on obtaining proper consent, approval of the Court and the concerned Government doctor, pregnancy of the minor victim girl was medically terminated, preserving the fetus of the DNA test. Only after such medical report of the minor victim girl the Investigating Officer of the case approached the Court for adding of Section 6 of the POCSO Act which was accordingly allowed on 06.11.2024.

12. The said status report dated 18.12.2024 also indicated that with due procedure, after collecting blood sample of the petitioner, the same along with the fetus recovered from the minor victim girl have been forwarded to the FSL for the relevant DNA test which is awaited.

13. The said status report dated 18.12.2024 further indicated that in her statement before the Magistrate under Section 183 BNSS, the victim girl stated that she has a boyfriend who also forcefully

had sexual relation with her very recently.

14. Considering such materials pertaining to the involvement of the petitioner in the alleged crime of forceful sexual intercourse with a minor girl of 14 years and considering the materials in the case record as made available before the Court by the concerned IO of the case vide the status report dated 18.12.2024, the Court is of the view that it is not a fit case to grant bail to the petitioner, named above, in said Garchuk P.S. Case No. 296/2024 considering his detention since 23.09.2024.

15. Accordingly, this bail application of the petitioner, namely, **Samsul Khan**, son of Eakababar Khan @ Ekabbar Khan in said Garchuk P.S. Case No. 296/2024 stands rejected.

16. The status report dated 18.12.2024 submitted by the IO of said Garchuk P.S. Case No. 296/2024 placed before the Court by Mr. Goswami, learned Additional Public Prosecutor, Assam be kept as a part of the record.

JUDGE

Comparing Assistant