

GAHC010285322023



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

Case No. : Bail Appln./4576/2023

BASAB KALITA
S/O JAGANATH KALITA @ NARAYAN KALITA
R/O LAKHYADHAR CHOUDHURY PATH, GOPAL NAGAR, P.S. NOONMATI,
DIST. KAMRUP (M), ASSAM

VERSUS

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

2:MRS. RIJU RAJBONGSHI
W/O AJIT RAJBONGSHI
R/O LAKHYADHAR CHOUDHURY PATH

GOPAL NAGAR
P.S. NOONMATI

DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. S SAHU

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

07.03.2024

Heard Mr. S. Sahu, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent No. 1 and Ms. N. Deka, learned counsel appearing on behalf of the respondent No. 2.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been arrested in connection with Noonmati P.S. Case No. 323/2023, under Section 376(AB) of the Indian Penal Code *read with* Section 4 of the POCSO Act.

Scanned copy of the case record along with the Case Diary has been received. Perused the same. Heard both sides.

It is submitted by Mr. S. Sahu, learned counsel for the petitioner, that the accused/petitioner is behind the bar since 28.11.2023 and in spite of lapse of such a long period, the charge has not yet been framed nor any evidences have been recorded by the Court. Further he submitted that there are lots of contradictions even in the objection filed by the respondent No. 2, wherein in one hand it is stated that they have entrusted the accused person to look after their daughter and on the other hand, it is alleged that he committed sexual assault on her. Further the accused/petitioner is suffering from Gallbladder stone which needs operation though presently the accused/ petitioner is stated to be stable as per medical report. He is a local person of that locality and will appear before the learned Court below on each and every date to be fixed by the Court.

In this context, and Ms. N. Deka, learned counsel appearing on behalf of the respondent No. 2, has submitted that from the statement made in the F.I.R. as well as the statement of the victim recorded under Section 164 Cr.P.C., it is seen that the victim girl was sexually assaulted by the accused/petitioner taking the advantage of trust on him by her parents. Further it is seen that the victim was initially threatened at the time of committing the offence and at this stage also, the accused is threatening the

witnesses through his relative to and thus, trying to tamper with the evidences of the witnesses even at this stage. Thus, there is every probability of hampering or tampering with the evidences of the witnesses, specially the victim, if the accused/petitioner is released on bail. Further she relied on a decision of Hon'ble Apex Court reported in **2023 0 Supreme (SC) 792 (Bhagwan Singh Vs. Dilip Kumar @ Deepu @ Depak & Anr.)**, wherein the Hon'ble Apex Court has laid down some guideline while entertaining the bail application, especially in case of POCSO Act.

In this context, Mr. M. P. Goswami, learned Additional Public Prosecutor, has submitted that considering the nature of allegation as well as the statement made by the victim under Section 164 Cr.P.C. and other aspects of the case, the probability of absconding of the accused/petitioner as well as of hampering or tampering with the evidence also cannot be denied at this stage and hence, he raised objection in allowing the accused/petitioner to go on bail at this stage.

Considering the submissions made by the learned counsels appearing for the parties, I have perused the scanned copy of the case record and the Case Diary as well as the statement made by the victim under Section 164 Cr.P.C. The minor victim brought serious allegation of sexual assault and penetrative sexual assault against the present accused/petitioner and considering the statement made by the learned counsel for the respondents in threatening of the witnesses, I find that the probability of hampering with the evidences of the witnesses, more particularly, the victim cannot be denied at this stage and hence, considering the entire aspects of the case viz-a-viz the nature of offence, I do not find it appropriate to pass any order on bail; and therefore, I find it not a fit case to extend the privilege of bail to the accused/petitioner and accordingly, the same stands rejected. However, the learned Court below is hereby directed to proceed with the trial and dispose of the case as expeditiously as possible, preferably within 6 (six) months.

In terms of above, this bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant