

GAHC010289532023



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

Case No. : Bail Appln./4607/2023

NIRESH KARMAKAR
S/O SRI SAMRAT KARMAKAR
R/O 2 NO. KAWAIMAR
P.S. MORAN
DIST. DIBRUGARH, ASSAM

VERSUS

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

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 10.01.2024

Heard Mr. D. Saikia, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent.

2. This petition, under Section 439 Cr.P.C. is preferred by the accused, namely, Niresh Karmakar, who has been languishing in jail hazot in connection

with Moran P.S. Case No. 99/2023, under Sections 457/376(3) of the IPC, read with Section 6 of the POCSO Act.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Moni Kalandi on 05.10.2023. The essence of allegation made in the FIR dated 05.10.2023, is that for the last 3-4 months, one Niresh Karmakar had committed rape upon the minor daughter of the informant, aged 15 years.

4. Mr. Saikia, the learned counsel for the accused submits that the accused is behind the bar for the last 90 days and no charge-sheet has been submitted till date and as such, the accused is entitled to default bail, and accordingly, it is contended to allow the petition.

5. On the other hand, Mr. R.J. Baruah, learned Addl. Public Prosecutor has confirmed that the case diary is with him and no charge-sheet has been submitted till date by the I.O. concerned.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. R.J. Baruah, learned Addl. Public Prosecutor.

7. It appears that the accused had surrendered before the learned Court below on 13.10.2023, and since then, he has been languishing in jail hazot. It further appears that no charge-sheet has been submitted till date, though the mandatory period of detention, i.e. 90 days, is already over.

8. In view of the above, this Court is of the view that the accused is entitled to default bail under Section 167(2) of the Cr.P.C. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Special Judge (POCSO), Dibrugarh, the accused be

enlarged on bail.

9. In terms of above, this petition stands disposed of.

10. Case diary be returned.

JUDGE

Comparing Assistant