

GAHC020003692024



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

**Case No. : Bail Appln./11/2024**

TABREJ ANSARI  
S/O JAHIR HUSSAIN  
R/O CHEPHOBOZOU, KOHIMA  
P/ADDRESS CHOTTA KOILAHARA, BIHAR

VERSUS

THE STATE OF NAGALAND AND ANR  
NAGALAND KOHIMA

2:MISS XYZ  
S/O XYZ  
ADDRESS MT. TIYI COLLEGE COLONY  
WOKH

**Advocate for the Petitioner : V. THEYO**

**Advocate for the Respondent : P.P, NAGALAND**

**BEFORE  
HON'BLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 05.08.2024**

Heard Ms. Nancy Lotha, learned counsel for the petitioner.

Also heard Ms. S. Mere, learned Public Prosecutor for the State respondent No. 1 and Ms. Asangla Longkumer, learned counsel appearing on behalf of the respondent No. 2 (informant/victim).

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 languishing in jail since 15.11.2023 in connection with Kohima Women P.S. Case No. 09/2023, R/w Section 4 of POCSO Act, registered under Section 366 of the Indian Penal Code, corresponding to G.R. No. 164/2023.

Scanned copy of LCR has already been received and I have perused the same.

It is submitted by the learned counsel for the petitioner, Ms. Nancy Lotha, that the accused/petitioner and the victim had love affairs and have known to each other since long and on the day of the incident the victim along with her family members were coming down from Bihar after attending the religious ceremony of her deceased father and when they reached at Kokrajhar train station she called the present accused/petitioner over phone and from there itself she eloped with the accused/petitioner and have stayed together but after the incident the matter has been compromised by the intervention of some Business Community as both the petitioner as well as the victim belongs to the Business Community and though the victim and the accused person are from different religion, their

matter has been compromised. More so, the accused/petitioner hails from Nagaland and there is no chance of absconding and there is no chance of evading any bail conditions and will appear as and when the date is fixed by the Court. She further submits that the case has already been charge-sheeted and the charge-sheet was filed on 10.01.2024 and the accused/petitioner is in custody since 12.11.2023 and considering his aspects also vis-à-vis the compromise between the parties he may be enlarged on bail.

In this context, the learned Public Prosecutor, Ms. S. Mere, raised objection and has submitted that the girl was admittedly a minor at the relevant time of incident and the ground of compromise is not tenable in the eye of law as the matter relates to POCSO and accordingly, she submits that till the recording of the evidence of the victim, the accused may not be enlarged on bail. Further, she submitted that there are no new and urgent grounds brought in the petition as the learned Court below has rejected 2(two) numbers of bail applications earlier for considering the matter available in the case record and Case Diary.

Ms. Asangla Longkumer, learned counsel appearing on behalf of the respondent No. 2 (informant/victim) has submitted that the case has already been compromised between the parties and hence, the respondent No. 2 raised no objection if the accused is released on bail.

After hearing the submissions of the learned counsels for both sides and also considering the materials available in the case record, I have perused the scanned copy of the case record and other relevant documents seized during the investigation. It is seen that the victim was stated to be a minor of 13(thirteen) years of age and accordingly, her consent cannot be considered at this stage. At the same time, it is seen that there are sufficient incriminating materials brought against the accused/petitioner while recording her statement under Section 164 of Cr.P.C and hence, I find that there may be hampering or tampering of the evidences of PWs, if the accused is released on bail at this stage especially before recording of the statement of the minor victim.

Therefore, considering the nature of the offence, I do not find it a fit case where the privilege of bail can be extended to the accused/petitioner at this stage and accordingly, the same stands rejected.

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

LCR be returned.

Sd/-

**JUDGE**

**Comparing Assistant**