GAHC010172472020

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

Case No. : Bail Appln./2640/2020

MOLOY KANTI BHATTACHARJEE @ MOLOY BHATTACHARJEE
S/O LATE MONORANJAN BHATTACHARJEE
R/O MALUGRAM
P.S.-SILCHAR
DIST-CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

B E F O R E

HON'BLE MR. JUSTICE HITESH KUMAR SARMA

16-12-2020

This is an application made under Section 439 Cr.P.C., seeking bail by the accused-petitioner, namely, ***Moloy Kanti Bhattacharjee @ Moloy Bhattacharjee*** in connection with ***Silchar P.S. Case No.3255/2020***, registered under Sections ***342/376*** of the Indian Penal Code, read with Section 4 of POCSO Act, 2012.

Heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Ms. Rina Rongmei, learned counsel for the petitioner. Also heard Mr. NJ Dutta, learned Additional Public Prosecutor, Assam for the Respondent State.

Case diary produced has been perused.

Allegation against the petitioner is that he has committed sexual assault on a six years old victim, who is the daughter of the informant. The case as indicated above is registered, inter alia, under Section 376 of the I.P.C. and Section 4 of the POCSO Act. The statement of the victim has been recorded under Section 164 of the Code of Criminal Procedure by a competent Magistrate. The statement of the victim was recorded after she was found competent to testify. From her such statement, although she has complained of certain facts, yet there is no statement to the effect that she was sexually assaulted. Above all, in her such statement, there is no specific accusation made against the petitioner in respect of any sexual assault.

On the other hand, medical report, available in the case diary, is from the Silchar Medical College and Hospital. The victim was examined there. On perusal of the medical examination report, it does not appear that there is sign of sexual assault upon the victim.

That being so, prima facie, in the considered view of this Court, neither Section 376 of the I.P.C. nor Section 4 of the POCSO Act appear to have been attracted in respect of this petitioner. However, this view is limited to this bail application only. On the other hand, the petitioner has been in custody for 47 days as on date with effect from 30.10.2020.

Considering the above materials in the case diary as well as the period of detention for 47 days, further custodial detention of the petitioner is not considered necessary in the interest of investigation of the case. Accordingly, the petitioner is granted the privilege of bail.

Accordingly, the accused-petitioner, named above, shall be released on bail in connection with the case aforementioned on furnishing bail bond of Rs.15,000/- with one suitable surety of the like amount, to the satisfaction of learned jurisdiction Special Judge under the POCSO Act.

The direction for bail is further subject to the conditions that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of learned jurisdiction Special Judge under the POCSO Act, without prior written permission from him;

(b) shall not hamper with the investigation, or tamper with the evidence of the case;

(c) 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 him from disclosing such facts to the Court or to any police officer.

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

Return the case diary.

JUDGE

Comparing Assistant