

GAHC010024072024



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

Case No. : Bail Appln./357/2024

BAOSRINGDAO DAOLAGAJAO @ BAOSRINGDAO DAOLAGAJAO,
RESIDENT OF MAIBANG KHEPRE WAJAO PS MAIBANG DIST DIMA HASAO
ASSAM

2: SRI SAMARJIT NUNISHA
S/O DISHRAON NUNISHA
R/O VILL- NOBDI
LONGKUKRO
26TH KILO
P.S. UMRANGSO
DIST. DIMA HASAO
ASSAM

3: SRI SONESH HOJAI
S/O SRI JOYPORNA HOJAI

R/O VILL- NOBDI LONGKUKRO
26TH KILO
P.S. UMRANGSO
DIST. DIMA HASAO
ASSAM

4: SRI SUBJOYNON JIDUNG
S/O JUGARAM JIDUNG

R/O VILL- NOBDI LONGKUKRO
26TH KILO
P.S. UMRANGSO

DIST.DIMA HASAO
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE P.P., ASSAM

2:SRI SOJEN NABENSA
R/O VILL- DIBUL
PS. UMRANGSO
DIST. DIMA HASAO
ASSA

Advocate for the Petitioner : MR. R BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05-04-2024

Heard Mr. T.J. Mahanta, learned Sr. Counsel for the petitioners. Mr. B. Sarma, learned Additional Public Prosecutor and Ms. D. Saikia, learned amicus curiae, representing the opposite party No. 2.

2. This is the regular bail application under **Section 439 Cr.P.C.**, filed by the petitioners, namely, **1. Baosringdao Daolagajao @ Baoringdao Daolagajao, 2. Sri Samarjit Nunisha, 3. Sri Sonesh Hojai and 4. Sri Subjoynon Jidung**, in connection with **Special POCSO Case No. 41/2023 corresponding to G.R. Case No. 237/2023 arising out of Umrangso Police Station Case No. 23/2023 under section 354/376D/34 of the IPC read with Section 6 of the POCSO Act, 2012.**

3. The factual matrix leading to this bail application is that on 24.10.2023, the opposite party No. 2 being the complainant, lodged the FIR before the Officer-in-Charge Umrangso Police Station, stating interalia that on the same day, at about 12.30 am, while the victim

along with her friends were talking each other near jungle, suddenly, the petitioners came to the place of occurrence and asked the alleged victim and her friends that what they are doing there at night. After that, the alleged victim and her friends ran towards the jungle wherein the petitioner No. 1, committed rape on the victim. On hearing her screaming, her friends came to the place of occurrence and found the alleged victim in naked condition and accordingly, the FIR was lodged and the case was registered as aforesaid.

4. On the strength of the aforesaid FIR, the petitioners were arrested and sent to judicial custody. Thereafter, the petitioners preferred bail application before the Special Judge, Dima Hasao which was rejected. After completion of investigation, charge-sheet has been laid against the aforesaid petitioners under section 376 D IPC read with section 6 of POCSO Act, 2012. On receipt of the charge-sheet, the Special Judge took cognizance of the offence under section 376D IPC read with section 6 of POCSO Act, 2012. Thereafter, another bail application was filed before the Special Judge, Dima Hasao but the said bail application was also rejected on the ground that the evidence of the victim has not yet been recorded and if the petitioners are allowed to go on bail which would hamper the trial of the case.

5. It was urged by the learned counsel for the petitioners that the petitioners have been detained in custody for last 158 days since their arrest on 25.10.2023. The learned Senior counsel has pointed out that the victim in her statement recorded under section 164 Cr.P.C has implicated the petitioner No. 1 who had committed rape on her. There is no allegation made by the victim that the petitioner Nos. 2, 3 and 4

had also committed sexual assault towards her. The learned counsel also stated that the medical examination of the victim was conducted on the same day of the alleged incident but from the medical report, it reveals that there was no sign of sexual intercourse as alleged by the victim.

6. It is also submitted by the learned counsel for the petitioners that as per medical report, it was found that the victim was carrying pregnancy at the relevant time. Thereafter, the victim was re-examined and her statement was again recorded under section 161 Cr.PC. wherein, she stated that since last one year, she was having love affair with one Jahirul Hoque and out of their physical relationship, she became pregnant. Subsequently, another FIR was lodged upon which another case was registered vide Umrangso P.S. Case No. 24/2023 under section 376 IPC read with section 6 of the POCSO Act. Though the said Jahirul Hoque was also arrested, but subsequently he was released on bail.

7. According to learned counsel for the petitioners, the materials available in the record shows that the victim is not at all trustworthy and she has changed her version from time to time. Under such backdrop and considering the length of detention, the petitioners may be enlarged on bail.

8. Per contra, the learned Additional P.P has vehemently opposed in granting bail to the petitioners by stating that though the victim has implicated that the petitioner No. 1 had committed rape on her but the other petitioners were also present on the spot and assisting the petitioner No. 1 in committing the said offence. The trial has not yet

been commenced and hence, the learned Addl.P.P has prayed not to release the petitioners on bail.

9. Learned amicus curiae Ms D. Saikia, representing respondent No. 2, has submitted that though the victim was impregnated by one Jahirul but from the FIR and the statement of the victim, it is crystal clear that all the petitioners were involved in the alleged offence. The victim is a minor girl, may be there was some contradiction here and there, but to consider the bail prayer of the petitioners, such type of contradiction cannot be looked into.

10. It is also contended that though no recent injury was found in the private parts of the victim but that cannot be a ground to consider the bail application of the petitioners. It is a matter of trial as this offence relates to commission of penetrative sexual assault to a minor girl which is a heinous crime. Hence, at this stage, the learned amicus curiae prays for dismissal of the bail application.

11. Admittedly, on the date of incident, the victim at the relevant time was accompanied with her four friends at midnight, in the jungle area. Suddenly, the above mentioned petitioners approached in aggressive way and except the victim, her other friends managed to escape from the place of occurrence. In her statement recorded under section 164 Cr.P.C., the victim clearly stated that the petitioner No. 1 had committed rape on her. She received injury on her forehead. She did not see other boys who came with him at that time.

12. The other friends accompanying the victim on the day, was also examined and their statements were recorded by the learned Magistrate under section 164 Cr.P.C.

13. Miss Monkumar Subba, stated before the learned Magistrate that when she along with the victim and two other ladies, Miss Lairingdi Nabensa and Miss Rangbila Nabensa were talking at a little distance from Durga Puja Pandel, suddenly, four people came on bike and they got down and ran towards them in aggressive mood. They all six became afraid and ran towards the jungle in different direction. After hiding about 5-10 mins in the jungle, they heard cries of a girl who was crying and shouting something in Dimasa language. Then they rushed to the spot and found the victim girl lying on the ground and partially naked. She saw the petitioner No. 1 was standing in front of her and assaulted the victim by using his hands. By that time her friends reached on the spot, the petitioner No. 1, also assaulted them.

14. The other friends of the victim also more or less stated the same thing before the Magistrate. One of them stated before the Magistrate that on the next day of the incident, a meeting was convened along with Goanbura and parents of the victim and other villagers were present in the said meeting. The victim in the said meeting has raised the point that the petitioner No. 1 had committed rape on her. The friends of the victim did not utter a single word that the victim had disclosed before them that all the petitioners had committed such nuisance towards her.

15. The medical report of the victim is available in the record from which, it reveals that the victim was examined by the medical officer on the same day of incident at about 4 pm. On examination of the victim, the doctor found the hymen absent, old tear present at 6,' 8,'1,' and 2 O'clock position. Other injuries like abrasion were found in the

forehead and linear abrasion was seen in the inner aspect of upper part of left thigh. The medical officer opined that there was no evidence of recent sexual intercourse at the time of examination. However, the victim was carrying pregnancy at the relevant time of examination.

16. If we believe and consider the statement of the victim, there is an allegation only against the petitioner No. 1 that he had committed sexual assault towards her. She had made no allegation against the other three petitioners that they had committed any such offence which falls under the purview of IPC and POCSO Act.

17. The medical report suggests that the victim girl was pregnant at the relevant time of incident. It is to be noted that on the same date of incident, the victim was examined by the doctor but the doctor opined that there was no evidence of recent sexual intercourse. However, it is a matter of trial to be considered, whether the victim was sexually assaulted on the date of incident and the injuries sustained by the victim are the outcome of such sexual assault.

18. At this stage as there is no allegation against the petitioner Nos. 2, 3 and 4, therefore, this Court is inclined to grant bail to the petitioner No. **2. Sri Samarjit Nunisha, 3. Sri Sonesh Hojai and 4. Sri Subjoynon Jidung**, considering their length of detention. However, the bail prayer of the petitioner No. **1. Baosringdao Daolagajao @ Baoringdao Daolagajao** is rejected. He is at liberty to approach before the trial court seeking regular bail on subsequent stage of trial.

19. Accordingly, the petitioners namely, **2. Sri Samarjit Nunisha,**

3. Sri Sonesh Hojai and 4. Sri Subjoynon Jidung shall be released on bail on furnishing a bail bond of **Rs.50,000/- (Rupees fifty Thousand) only each** with **two suitable sureties** of the like amount each, to the satisfaction of learned Sessions/ Special Judge, Dima Hasao in connection with **Special POCSO Case No. 41/2023 corresponding to G.R. Case No. 237/2023 arising out of Umrangso Police Station Case No. 23/2023 under section 354/376D/34 of the IPC read with Section 6 of the POCSO Act, 2012.**

20. The direction for bail is further subject to the conditions that the accused-petitioners:

(a) shall not leave the territorial jurisdiction of learned Special/Sessions Judge, Dima Hasao, without prior written permission from him/her;

(b) 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.

JUDGE

Comparing Assistant