

GAHC010022032024



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

Case No. : Bail Appln./362/2024

NASIM AKHTAR @ NASIM AKTAR
S/O SRI ABDUL SALAM
R/O DABOKA NALA
P.S. DABOKA
P.O. HINDU BLOCK, DIST. HOJAI,
ASSAM, PIN-782440

VERSUS

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

2:MISS AFSANA BEGUM
D/O ABDUL SHAHID
R/O NAGAYAPAM
P.S. JAMUNAMUKH
DIST. HOJAI
ASSAM
PIN NO.-78242

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

04.03.2024

Heard Mr. N.K. Murry, learned counsel for the accused and also heard Mr. R.J.

Baruah, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely, Nasim Akhtar @ Nasim Aktar, who has been languishing in jail hazot since 17.11.2023, in connection with Daboka P.S. Case No.224/2023, under Section 366(A)/376/354(C) IPC, read with Section 6 of the POCSO Act, for granting bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Smt. X (name withheld) on 17.11.2023. The essence of allegation made in the aforesaid FIR is that for last 13 years, she has been staying at Bhadoati and pursuing her studies at Daboka Higher Secondary School and about 8 months back accused Nasim Akhtar called her to Daboka market and thereafter, along with another boy, he had taken her to Akashiganga in a vehicle by saying that they will drop her in her home, but instead of taking her to her home they have taken her to Akashiganga, where Nasim Akhtar committed rape upon her and recorded the scene in the mobile and also threatened her not to disclose the same to anybody, else to make the video viral in the social media. And thereafter, also on several occasions he had taken her to different places and committed rape upon her.

4. Mr. Murry, learned counsel for the accused, submits that the accused is languishing in jail hazot for last 109 days and that there is love affairs between the accused and the informant and that the victim is a consenting party and her age is more than 18 years and that he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, submits that after completion of investigation, the I.O. has submitted charge-sheet against the accused under Section 366(A)/376/354(C) IPC, read with Section 6 of the POCSO Act and now the case is pending before the Court of learned Sessions Judge, Hojai, for consideration of charge and further referring to the statement of the victim girl recorded under Section 164 Cr.P.C., Mr. Baruah submits that the victim girl has implicated the accused with the offence alleged, which are serious in nature and therefore, it is

contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below.

7. It is not in dispute that after completion of investigation, the I.O. had laid charge-sheet, being Charge-Sheet No.214/2023, dated 31.12.2023, under Section 366(A)/376/354(C) IPC, read with Section 6 of the POCSO Act. Further, it appears from the record of the learned Court below that the case is pending for consideration of charge and the statement of the victim girl recorded under Section 164 Cr.P.C. reveals that she has implicated the accused with the offence alleged in the FIR.

8. Though Mr. Murry, learned counsel for the accused submits that the age of the accused is above 18 years and that there was love affairs between the accused and the informant, yet, the said submission left this Court unimpressed in view of the materials collected so far in the case diary. The allegations are serious in nature and charges are yet to be framed and therefore, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused and accordingly, the bail application stands dismissed.

9. However, the learned Court below is directed to expedite the trial and to make an endeavour to dispose of the same at an earliest date without being influenced by any of the observations made herein above.

Sd/- Robin Phukan
JUDGE

Comparing Assistant