

GAHC010235662023



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

Case No. : Bail Appln./3737/2023

SANIDUL ISLAM
S/O- MUSLIM UDDIN, R/O- VILL.- KHORAGAON, P.S. JOGIGHOPA, DIST.
BONGAIGAON, ASSAM, PIN- 783384.

VERSUS

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

2:AYUB KHAN
SECRETARY-CUM-CHILD PROTECTION OFFICER
KHORAGAON
PANCHAYAT
P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
PIN- 783384

Advocate for the Petitioner : MR A K AZAD

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

31.10.2023

1. Heard Mr. A.K. Azad, learned counsel appearing for the petitioner as well

as Mr. R.J. Baruah, learned Additional Public Prosecutor for the State respondent and Ms. P. Adhikari, learned counsel for the victim's parents.

2. This application under Section 439 Cr.P.C, is preferred by the petitioner, namely, Sanidul Islam, who is in judicial custody since 04.10.2023 in connection with Jogighopa P.S. Case No. 258/2023, registered under Sections 6/17 of the Protection of Children From Sexual Offences (POCSO) Act, 2012, R/W Section 9/10/11 of the Child Marriage Prohibition Act, 2006.

3. The learned counsel for the petitioner has submitted that Secretary-Cum-Child Protection Officer lodged an FIR with allegation that the 17 year old victim 'X' was forcefully married to the petitioner. This is a false allegation as the victim has eloped with the petitioner on her own volition and she was in love with the petitioner. At present, the petitioner is languishing in the jail for 27 days. The entire family suffering as he is the sole breadwinner of his family. This case has been erroneously booked under POCSO Act because this is not a case of sexual assault.

4. The learned Addl. P.P. has raised objections stating that the victim was married to the petitioner when she was a minor. The learned counsel representing the petitioner's parents Ms. P. Adhikary has no objection if the petitioner is enlarged on bail.

5. I have considered the submissions at the Bar and I have also perused the case diary.

6. There is no allegation of sexual assault on the victim. I have considered the submission that the petitioner is the sole breadwinner of his family and I have also considered the length of detention of the petitioner.

7. Considering all aspects, petition is allowed.
8. The petitioner is to be enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the learned Special Judge, POCSO, North Salmara, Abhayapuri, Bongaigaon.
9. Accordingly, bail application stands disposed of.
Send back the case diary.

JUDGE

Comparing Assistant