

GAHC010274352024



2025:GAU-AS:2114

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

Case No. : Bail Appln./3917/2024

MORTAZA ALIA @ ARIYAN AHMED
S/O MD. MAZIBAR ALI,
RESIDENT OF BHABANIPUR B BLOCK, PS MUSHALPUR, DIST BAKSA,
ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

2:HOMESWAR DAS
S/O LATE SURAJIT DAS

RESIDENT OF VILLAGE NO 2 BHOGPARA PO AND PS MUSHALPUR DIST
BAKSA
ASSAM 78137

Advocate for the Petitioner : MR S PAUL, MS F BEGUM

Advocate for the Respondent : PP, ASSAM, MR. SURAJIT DAS, (AMICUS CURIAE R2)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

28.02.2025

Heard Mr. S Paul, learned counsel for the petitioner and Mr. B Sharma, learned Additional Public Prosecutor, Assam for the State. Also heard Mr. S Das, learned Amicus Curiae appearing for the respondent No. 2/informant of the case.

2. The petitioner, namely, **Mortaza Ali @ Ariyan Ahmed**, son of Md. Mazibar Ali, resident of village-Bhabanipur B-Block, P.S.-Mushalpur, District-Baksa has filed this application under Section 483 BNSS, praying for his bail in **Special POCSO Case No. 116/2024** arising out of **Mushalpur Police Station Case No. 106/2024** under Sections 137(2)/87 of the BNS read with Section 4 of the POCSO Act, corresponding to G.R. No. 813/2024, in which he was arrested on 29.09.2024 and is in custody since then.

3. By order dated 20.12.2024, the Court called for the relevant case records.

4. As per the FIR dated 29.09.2024 lodged by the respondent No.2/informant of the case before the Mushalpur Police Station, District-Baksa, the case is that on 28.09.2024 around noon his minor daughter went to the house of her maternal uncle at Silapata. Around 5 PM he came to know that she did not visit the house of her uncle and was kidnapped by the petitioner from her legal guardian to his residence and had sexual relation with her.

5. On receipt of the said FIR, Mushalpur Police Station Case No. 106/2024 under Sections 137(2)/87 of the BNS read with Section 4 of the POCSO Act was registered.

6. From the records of the case, it is seen that the informant on 28.09.2024 at around 9:30 PM also lodged a written complaint at Nikashi Outpost stating that on the same date around noon his minor daughter who went to Silapata village to the house of her maternal uncle disappeared and in that regard Nikashi Outpost GD Entry No. 11/2024 dated

28.09.2024 and Nikashi Outpost NMR No. 11/2024 dated 28.09.2024 was recorded.

7. The petitioner contended that he is in custody since 29.09.2024 and in the meanwhile prosecution have adduced 3 of its witnesses including the informant and the minor victim. Placing the Medical Report of the victim girl, Mr. Paul, learned counsel for the petitioner has submitted that there are no evidence of recent sexual intercourse on the person of the victim girl. Mr. Paul further placed that the petitioner is around 22 years old. Considering the same, Mr. Paul, learned counsel prayed for bail of the petitioner who is in custody since 29.09.2024.

8. Mr. Paul, learned counsel for the petitioner also placed reliance on a decision of the Hon'ble Apex Court in the case of *Deshraj @ Musa -Vs- State of Rajasthan & Another* in Special Leave to Appeal (Criminal) No. 11020/2024, reported in *2024 Supreme (Online) (SC) 10009* decided on 04.10.2024, wherein the Hon'ble Apex Court allowed the accused petitioner/accused appellant Deshraj @ Musa to go on bail who was in custody since 08.05.2024 under Section 354(D)/506/363/366/376/511/34 IPC read with Sections 7/8/11/12 of the POCSO Act, 2012.

9. From the said judgment of the Hon'ble Apex Court in the case of Deshraj @ Musa, Mr. Paul, learned counsel for the petitioner has submitted that the Hon'ble Apex Court considered that the petitioner was arrested on 08.05.2024, charge-sheet in the case was filed on 05.06.2024 and there were as many as 12 numbers of witnesses to examine and that trial of the case will be prolonged. Mr. Paul placed that in the case in hand, after filing of the charge-sheet the learned Trial Court have already recorded the evidence of 3 prosecution witnesses and evidence of 9 more prosecution witnesses are yet to be recorded. As such, Mr. Paul, learned counsel for the petitioner prayed for bail of the petitioner in said Special POCSO Case No. 116/2024 arising out of Mushalpur P.S. Case No. 106/2024.

10. Mr. B Sharma, learned APP, Assam placing the evidence of the minor victim girl indicated that on the date of the incident, the victim girl was a minor and that the victim girl was unaware that he belongs to a different community till the time she was taken by the petitioner to his house.

11. Mr. B Sharma, learned APP, Assam placed before the Court that 04.03.2025 is the next date fixed for recording of evidence of prosecution witnesses in said Special POCSO Case No.

116/2024.

12. Mr. Das, learned Amicus Curiae appearing for the respondent No.2/informant of the case placed before the Court that the petitioner was arrested on 29.09.2024, charge-sheet in the case was filed on 31.10.2024 and in the meanwhile, the learned POCSO Court have already recorded the evidence of 3 of its prosecution witnesses. Mr. Das also submitted that as there are some independent witnesses, bail of the petitioner should not be considered till recording of evidence of those independent witnesses and further, there is no such delay in said Special POCSO Case No. 116/2024.

13. On perusal of the records of the case, it is seen that police have seized the original Birth Certificate of the victim girl which shows that her date of birth is 27.11.2009 and the same was issued to her on 03.12.2009, marked as Material Exhibit No. 2002/2024. The incident occurred on 28.09.2024 and on the date of the incident on 28.09.2024, the victim girl was 14 years 10 months old. As such, she was a minor on the date of the incident as per the provisions of the POCSO Act.

14. Though Mr. Paul, learned counsel for the petitioner has submitted that there are discrepancies with regard to the evidence of the victim girl recorded by the learned Trial Court vis-à-vis her statement under Section 183 BNSS, but it is seen that in her Section 183 BNSS statement recorded on 29.09.2024 by the learned Additional Chief Judicial Magistrate, Baksa, the victim girl stated that she was about 15 years old and implicated the petitioner of committing sexual relation with her on the night of the incident on 28.09.2024.

15. In her deposition before the learned Trial Court, i.e., the Court of the learned Special Judge (POCSO), Baksa, Mushalpur, the victim girl reiterated that the petitioner on the night of the incident had committed forceful sexual intercourse with her.

16. In the Forwarding Report dated 30.09.2024 the petitioner is shown to be 22 years old and in the Charge-Sheet dated 31.10.2024 he is shown to be 23 years old.

17. In the judgment of the Hon'ble Apex Court placed by Mr. Paul, learned counsel for the petitioner in the case of Deshraj @ Musa (Supra), the Hon'ble Apex Court found that the victim was 16 years old and the accused was 18 ½ years old and they had a consensual

sexual intercourse. But, in the case in hand, the victim girl was 14 years 10 months old and the accused petitioner was 22/23 years old on the date of the incident.

18. Though Mr. Paul, learned counsel for the petitioner from the Medical Report of the victim girl placed that there was no evidence of recent sexual intercourse found on the person of the victim girl, but in her physical examination under the column 'General Examination', her hymen was found ruptured.

19. The victim girl indicated that she had acquaintance with the petitioner for about 3 months prior to the date of the incident through Instagram, where the petitioner introduced himself as Ariyan. Though on the date of the incident the petitioner asked the victim girl to accompany him, she rejected such offer, due to which he became annoyed and then she consented to go with him. Thereafter, the petitioner took the victim girl on a two wheeler. Initially the petitioner took her to Dumuni Tea Estate, then to a park and thereafter, kept her in his house on the night of the incident, during which he had forceful sexual intercourse with her.

20. From the charge-sheet of the case, it is seen that out of the 12 prosecution witnesses, evidence of 9 more prosecution witnesses are yet to be recorded that includes the Investigating Officer of the case, the concerned Doctor who medically examined the victim girl and some other independent witnesses.

21. In the case in hand the FIR was lodged on 29.09.2024, the petitioner was arrested on 29.09.2024, after completion of the investigation of the case police submitted charge-sheet in Mushalpur P.S. Case No. 106/2024 on 31.10.2024. On 12.11.2024 the learned Special Judge (POCSO), Baksa, Mushalpur in Special POCSO Case No. 116/2024 took cognizance of the offence under Sections 137(2)/87 of the BNS read with Section 4 of the POCSO Act. Thereafter, the said learned Trial Court on 28.11.2024 framed charge under Section 84 of the BNS, 2023 read with Section 4 of the POCSO Act in said Special POCSO Case No. 116/2024, wherein evidence of the 3 prosecution witnesses including the victim girl and the informant was recorded on 12.12.2024 and 08.01.2025.

22. The Hon'ble Apex Court in the case of *X -Vs.- State of Rajasthan*, reported in (2024) INSC 909 =2024 STPL 12498 SC have held that—

“In serious offences like rape, murder, dacioty etc., once the trial commences and the prosecution starts examining its witnesses, the Court, be it the Trial Court or the High Court should be loath in entertaining the bail application of an accused of the case.”

23. Their Lordships in said X Vs. State of Rajasthan further held that —

“15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim. 16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

24. After hearing the learned counsels for the parties and considering the decisions of the Hon’ble Apex Court, noted above, this Court found that the right of the accused petitioner to have speedy trial has not been infringed.

25. Considering the entire aspect of the matter and for the reasons above, the bail of the petitioner, Mortaza Ali @ Ariyan Ahmed, son of Md. Mazibar Ali, in said Special POCSO Case No. 116/2024 arising out of Mushalpur P.S Case No. 106/2024, stands **rejected**.

26. Gauhati High Court Legal Services Committee shall pay the remuneration to Mr. Surajit Das, learned Amicus Curiae for assisting the Court in adjudication of this bail application, on raising a bill by him.

27. It is made clear that the learned Trial Court while adjudicating the said Special POCSO Case No. 116/2024 arising out of Mushalpur P.S Case No. 106/2024 shall not be influenced

by any of the observations or findings, made hereinabove in this bail application.

JUDGE

Comparing Assistant