

**IN THE COURT OF THE ADDL. SESSIONS JUDGE CUM SPECIAL
JUDGE, POCSO, DHUBRI**

Present: Mrs. Poli Kataki, A.J.S.

Addl. Sessions Judge Cum Special Judge, POCSO, Dhubri.

Special Case No. 351 of 2022

Tamarhat P.S. case No.59/2022

ORDER

02.08.2023 Smt. Rituparna Guha, learned Special P.P., Dhubri is present.

Shri Mirza Khan, learned counsel along with Shri Kamrul Hossain, learned counsel appearing for the accused person is present.

Seen the third successive bail petition No.351/23, filed under section 439 of Cr.PC praying for release of the accused person, namely, Khalil Sk @ Kahimuddin Sk on bail who has been arrested in connection with Tamarhat P.S. case No.59/2022, corresponding to GR case No.1675/2022, registered u/s 366 A/376/34 IPC, R/w section 4 of POCSO Act and is in judicial custody since 07.06.2023.

The brief facts of the prosecution case is that the complainant lodged an ejahar before the Officer-in-Charge of Tamarhat Police Station on alleging inter-alia that on 30.09.2022 at about evening 7 PM the complainant Minor daughter aged about 14 years was missing from the house of the complainant and after searching in various places not found the complainant minor daughter. On the next day at morning on 01.10.2022 at about 4 AM the complainant found his daughter on the back side of his house in a Banana Plant and after asking his daughter he came to know that the accused No.1. Haydar Ali with the help of the accused Khalil Sk raped his daughter and fled away from the place of occurrence.

On the basis of the aforesaid ejahar, Tamarhat P.S. case No. 59/2022, corresponding to G.R. case No. 1675/2022, registered u/s 366(A)/376/34 IPC, R/w section 4 of POCSO Act was registered against the accused person and the matter was taken up for investigation.

The IO has completed investigation and filed charge-sheet in the instant case.

The Complainant has been duly served with mandatory notice as per provision of proviso (1-A) of Section 439 of CrPC and judgment dated 23.06.2023 passed in Crl. Appeal (J) No. 40/2022 by the Hon'ble Guwahati High Court , however , despite due service of notice did not appear.

Shri Mirza Khan, learned counsel appearing for the accused person, submitted that on 07.06.2023 the arrestee has voluntarily appeared before this Hon'ble court after receiving summon. On being perusal the case record this Hon'ble court is pleased to reject the bail petition filed by the accused and took him to the custody, since then he is in jail custody. The learned counsel also submitted that on 29.04.2023, the investigation officer has already completed the investigation and submitted charge sheet by showing the arrestee as absconder. The investigation of the case has already been completed and there is no chance of hampering and tampering the prosecution witnesses. The learned counsel also submitted that the accused person is no way connected with the alleged offence and they are falsely implicated with the alleged offence. The learned counsel also submitted that the accused

person is no way connected with the alleged offence and they are falsely implicated with the alleged offence. The learned counsel also submitted the accused persons will fully co-operate with the trial and also undertake that he will fully co-operate with the trial and also undertake that he will appear each and every date before this court and never hamper and temper with the prosecution evidence. The learned counsel also submitted that the accused persons is the local inhabitant within the jurisdiction of this Hon'ble court and having movable and immovable property as such there are no chance of him absconding. The learned counsel also submitted that the arrestee will undertake that he will abide by any conditions imposed upon him at the time of granting him bail and shall not hampering and tempering with the prosecution evidence.

On the other hand, Smt. Rituparna Guha, learned Special P.P. for the state, objected to releasing the accused person on bail stating that there is prima-facie material against the accused person and that the offence leveled against the present accused is serious in nature.

I have heard the submissions of both sides and perused the materials available on the case record.

In the instant case, the accused is in judicial custody since 07.06.2023. The trial in the case has commenced and the charge has been framed against the accused persons. The co-accused person has been released on bail vide order dated 26.05.2023. Hence, considering the Section 164 of CrPC statement of the Victim girl and the gravity of the offence and the fact that trial of the case

has commenced, I consider it fit to allow the accused on bail at this stage.

Hence, considering the submissions of the learned counsel for both the sides and keeping in consideration the facts and circumstances of the case as revealed from the case diary, without commenting on the merits of the case, I am of the opinion that keeping the accused person in jail would serve no purpose and accordingly he may be released on bail.

Considering all these facts , the bail prayer is allowed. Accused person Khalil Sk @ Kahimuddin Sk (A-2) is hereby allowed to go on bail of **Rs. 35,000 /- [Rupees Thirty Five thousand only] with a surety of like amount** subject to the following conditions:

- (1) The accused person will appear before the Trial Court on each and every date fixed unless exempted for very genuine cause.
- (2) The accused person shall not try to influence Accused person shall not commit any offence similar to which he is accused of.
- (3) The accused person 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 them from disclosing such facts to the Court or any police officer.
- (4) The accused person shall not move in the vicinity of the victim and shall not be a source of harassment and embrace to her in any manner.
- (5) The accused person shall not delay the trial of the case.

(6) The accused person shall furnish his updated mobile number and address and change in the same to the IO concerned and if the IO is not available to the concerned OC.

In view of the decision passed by the Hon'ble Supreme Court, in the case of **Aparna Bhat and others Vs. the State of Madhya Pradesh and another, dated 18th March, 2021, in Criminal Appeal No. 329 of 2021**, a copy of the order be furnished free of cost to the complainant.

Send a copy of the order of this case to the IO of the case.

The instant bail petition is accordingly disposed of.

[P. Kataki]
Addl. Session Judge cum
Special Judge, POCSO, Dhubri