

(2021) 06 GAU CK 0147
In the Gauhati High Court
Case No : Bail Application No. 1179 Of 2021

Salma Bibi @ Salma Akhtar Begum

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 24-06-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439
Indian Penal Code, 1860 — Section 109, 120B, 366, 366A, 369, 370, 370(4), 372, 373, 376D, 419
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6, 17
Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 6

Citation : (2021) 06 GAU CK 0147

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : N Alam

Final Decision : Dismissed

Judgement

1. The Court proceedings have been conducted through remote video conferencing mode due to the prevailing situation in the State due to Covid-19 pandemic.

2. Heard Mr. D. Borah, learned counsel for the accused petitioner and Mr. T.K. Mishra, learned Additional Public Prosecutor for the respondent State of Assam.

3. By this application under Section 439, Code of Criminal Procedure, 1973, the accused petitioner viz. Salma Bibi @ Salma Akhtar Begum has

prayed for her release on bail in connection with Sarfanguri Police Station Case No. 49/2020, registered under Section 366, Indian Penal Code (IPC)

read with Section 120(B)/109/366A/369/376D/370(4)/372/ 419/373, IPC read with Section 6 of the Protection of Children from Sexual Offences Act,

2012 (POCSO Act) read with Section 3/4/5/6 of the Immoral Traffic (Prevention) Act, 1956.

4. The scanned copies of the records of Special Case No. 29/2020 were requisitioned from the Court of Special Judge (FTC), Kokrajhar. Accordingly, the same are received.

5. The victim was staying in the house of one Sri Bhola Pradhan located at Shantipara, Police Station-Sarfanguri District-Kokrajhar for about last 3

(three) months. The victim used to do household chores in the house of Sri Bhola Pradhan. At noon on 30.07.2020, the victim had gone to the market

to buy medicines and since then, she was missing. The informant, Sri Bhola Pradhan lodged the First Information Report (FIR) on 31.07.2020 stating

that when till the evening hours of 30.07.2020 the victim did not return, he called the victim's mother and came to know that the victim was not at

her mother's house. Searches were made by the informant but the victim could not be found. Thereafter, a call was received by the mother of the

victim in her mobile from an unknown male person who called her by a mobile no. 85388-43393. The said unknown person informed the mother of the

victim that her daughter was with him and she did not have to worry about her. On receipt of the FIR, Sarfanguri Police Station Case No. 49/2020

was registered initially under Section 366, IPC. The investigation was accordingly initiated. During the course of investigation, the mobile no. 85388-

43393 was tracked and by such tracking, the police personnel apprehended one accused viz. Jahanuddin SK from his house and he was taken into

custody. On being interrogated, it was found that he started an affair with the victim for about last 6 (six) months prior to the date of kidnapping and

by inducing her on the pretext of the love affair, the victim was taken to the red light area of Siliguri. At the red light area, the victim was sold to the

present accused-petitioner, Smt Salma Begum by taking an advance amount of Rs. 1,000/- with the condition that if the victim earns money by

prostitution, he had to be paid accordingly by the present accused-petitioner. Having received such information, the police personnel from Sarfanguri

Police Station went to Siliguri and with the help of a team of police personnel from the local police station, the red light area of Siliguri was visited. It

was from there, the present accused-petitioner was arrested and the victim was recovered from the custody of the present accused-petitioner. After

recovery, the victim was produced before the Court and her statement under Section 164, CrPC was recorded. In her statement, the victim had stated

that she was forced by the present accused-petitioner to have sexual intercourse with four male persons forcibly. The birth certificate of the victim

showed that she was a minor, aged about 17 years.

6. In view of the above, Sections 366A/369/372, IPC and Section 4, POCSO Act was added to Sarfanguri Police Station Case No. 49/2020. The

medical examination of the victim was done on 06.08.2020 at RNB Civil Hospital, Kokrajhar. Upon medical examination, it was opined that the victim

was exposed to sexual intercourse multiple times before 36 hours. After arrest, the present accused-petitioner was remanded to custody on

07.08.2020.

7. During the course of investigation the house of the present accused-petitioner was searched and it was found that the same had been used as a

brothel. A number of articles were seized from the said house. After completion of investigation, the Investigating Officer of the case had submitted a

charge sheet vide Charge Sheet No. 42/2020 dated 27.09.2020 finding a prima facie case against Jahanuddin Sk and the present accused-petitioner

for commission of offences under Sections 120(B)/109/366(A)/369/376(D)/370(4)/372/373/ 419, IPC R/W Section 6, POCSO Act, 2012 R/W Section

3/4/5/6, Immoral Traffic (Prevention) Act, 1956. After submission of the charge sheet, the case has been registered as Special Case No. 29/2020.

8. Learned counsel for the accused-petitioner has submitted that the accused-petitioner is in custody since 07.08.2020 and the trial of the case has

progressed substantially as a number of witnesses including the victim, have been examined in the meantime. Considering the period of detention, the

accused-petitioner may be released on bail subject to imposition of appropriate terms and conditions.

9. Learned Additional Public Prosecutor has vehemently objected to the prayer made on behalf of the accused-petitioner for bail.

10. I have considered the submissions of the learned counsel for the parties and have also perused the materials available in the records of Special

Case No. 29/2020. On such perusal, it is found that the learned trial Court had found sufficient materials to presume that the accused Jahanuddin Sk

had committed the offences under Sections 366/370/370A/372/419, IPC read with Sections 6/17, POCSO Act, 2012 read with Section 5, Immoral

Traffic (Prevention) Act 1956. Learned trial Court has also found sufficient materials against the accuse-petitioner for the offences under Section

3/4/6, Immoral Traffic (Prevention) Act, 1956 read with Section 370/370A/372, IPC read with Sections 6/17, POCSO Act, 2012. Accordingly,

charges were framed against them and the accused-petitioners pleaded not guilty and claimed to be tried. After framing of charges, two witnesses

including the victim, were examined on 05.01.2021. In her evidence, the victim had deposed, as discernible from the order dated 05.01.2021 of the

learned trial Court, to the effect that she was forced to have sexual intercourse with unknown persons by the present accused-petitioner. Till date, 9

(nine) nos. of prosecution witnesses have been examined by the learned trial Court. In the charge sheet, the investigation Officer has indicated that

about 40 nos. of witnesses are to be examined by the prosecution to bring home the charges against the accused persons including the present

accused-petitioner. One of the charges the accused-petitioner is facing is with regard to running of brothel in the red light area of Siliguri and in order

to run the brothel, she used to indulge in activities of inducing girls for sexual exploitation and forcing them into prostitution by practicing fraud. The

accused-petitioner is alleged to have procured minor girls to have sexual intercourse with her customers on payment of consideration and thereafter,

subjecting them to sexual exploitation by making them to undergo sexual intercourse with unknown persons. The charges against the present accused-

petitioner are serious and she appears to be involved in the act of running a brothel in an organized manner. Though 9 (nine) nos. of prosecution

witnesses have been examined till date but more than 30 nos. of prosecution witnesses are yet to be examined.

11. While considering the application for bail the factors which are required to be considered and weighed are (i) whether there is any prima facie or

reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the

event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behavior, means, position and standing of the

accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course,

of justice being thwarted by grant of bail. It is no doubt true that while considering an application for bail the aspect of personal liberty of the accused is also to be considered. But at the same time, the interest of free and fair trial of the case, more particularly, when it pertains to an offence of heinous nature is also to be looked into. The discretion vested in the Court for grant of bail or otherwise has to be exercised in a judicious manner and not as a matter of course.

12. Having considered the materials on record against the present accused-petitioner, the stage of trial where a number of vital witnesses are yet to be examined, the manner in which the accused-petitioner is found to be involved in running the brothel and a racket of prostitution wherein the minor victim girl was made to undergo sexual intercourse with a number of unknown male persons and the possibility that if the accused-petitioner is allowed to be released on bail, at this stage of trial, that the accused-petitioner might resort to defeating the course of justice and a fair trial by evading to appear before the learned trial Court and might resort to influence and intimidate the remaining witnesses, this Court is of the considered view that the prayer for bail is not merited at this stage of the trial and accordingly, the present bail application is rejected.

13. It is, however, made clear that the observations made above are only for the purpose of consideration of the present accused-petitioner's prayer for bail and none of the observations made in this order shall have any bearing on the trial of the accused-petitioner.