

GAHC010158992023



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

Case No. : Crl. Pet. (Suo Moto) No.1/2023

X X X

VERSUS

1: IN RE- STATE OF ARUNACHAL PRADESH AND 2 ORS.
REPRESENTED BY THE PUBLIC PROSECUTOR

2:TADAM SAMNAM (INFORMANT)

3:YUMKEN BAGRA

For the Petitioner : Mr. T.J. Mahanta, Senior Standing Counsel, Gauhati High Court,
assisted by Mr. T. Gogoi, Advocate.

For the Respondents : Mr. I. Chowdhury, Advocate General, Arunachal Pradesh, assisted by
Mr. N.N.B. Choudhury, Additional Advocate General, Arunachal Pradesh.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE

21.07.2023

Being shocked by the news articles published in 2(two) newspapers, namely, "*Purvanchal Prahari*" and "*The Arunachal Times*", regarding grant of bail to the accused Yumken Bagra, Hostel Warden of the Government Residential School, Karo Village, Monigong, Shi Yomi District, who is alleged to

have sexually assaulted 21 children (15 girls and 6 boys), aged 6 to 12 years between 2019 to 2022, this Court has been compelled to register this *suo moto* cancellation of bail application.

2. Copies of the relevant records including the order granting bail to the accused Yumken Bagra dated 23.02.2023 passed by the Special Judge, POCSO Act Cases, Yupia, Arunachal Pradesh, in Monigong Police Station Case No.2/2023 registered for the offences under Sections 10/12/14/(1)/15(1)/2 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), and the relevant documents of the charge-sheet, etc., have been procured by the Registry of this Court.

3. A perusal of the record reveals that the victims (21 in numbers) were all less than 15 years of age when the dastardly act of sexual assault by person in authority, i.e. the Hostel Warden accused herein, was committed upon them. A perusal of the charge-sheet, which contains brief reference to the statements of the victims, further reflects that the accused Warden forced the children staying as boarders in the Hostel to watch pornographic movies and repeatedly subjected them to sexual assault. The medical reports of most of the victims corroborates the fact that they were sexually assaulted as marks of violence were noticed on their private parts.

4. Since the offence under Section 376AB of the IPC has also been applied in the case, by virtue of Section 439(1A) of the Cr.PC it is mandatory to ensure presence of the informant or any person authorized by him at the time of hearing of the application for bail. However, perusal of the bail order dated 23.02.2023 would reveal that the Special Court acted in gross disregard to this mandatory provision.

5. The learned Special Public Prosecutor, Arunachal Pradesh, objected to the prayer for grant of bail stating that this was a third successive bail application on the same ground. The learned Special Public Prosecutor also opposed the bail application on the ground that releasing the accused on bail would prejudice the prosecution case as the accused holds the capacity to influence the witnesses and tampering the evidence, which was yet to be recorded.

6. However, the Special Court, without giving due consideration to these substantial objections of the learned Special Public Prosecutor, Arunachal Pradesh, granted bail to the accused in an absolutely casual manner despite observing that the statements of the victims reveal a grave offence having been committed but the trial was yet to begin due to non-appearance of the co-accused Daniel Pertin. Absolutely flimsy reasons were assigned by the Special Court for granting bail to the accused who being the Hostel Warden, was entrusted the duty of ensuring the safety of the children lodged in the Hostel acted in a demonic manner and sexually assaulted the young children over a period of almost 3(three) years and also exposed them to pornographic material. The trial of an accused charge-sheeted for such serious offences need not wait for the apprehension of the absconding accused and proceedings can even be continued by separating the trials.

7. Be that as it may. The conscience of the Court has been shaken by the way in which a case of such grave magnitude and sensitive nature has been dealt with in an absolutely cavalier fashion by granting bail to the main accused without assigning any plausible reasons. The larger issue which bothers the mind of the Court is regarding safety of the victims of the ghastly

act of sexual assault after the release of the accused on bail.

8. In this background, it is hereby directed that let notice of the bail cancellation proceedings be issued to the accused Yumken Bagra, son of Late Niyum Bagra, and shall be provided *dasti* to Mr. I. Chowdhury, learned Advocate General, Arunachal Pradesh for ensuring service upon the accused through the Officer-in-Charge of the Police Station concerned for the next date of listing.

The accused shall be intimated that he may engage counsel of his own choice who would be at liberty to address the Court from Itanagar Permanent Bench through VC, if so desired. In case the accused is not in a position to engage a counsel to represent him in this proceeding, the services of a free legal aid counsel shall be provided under the aegis of the Arunachal Pradesh State Legal Services Authority.

9. The learned Advocate General, Arunachal Pradesh shall forthwith instruct the Director General of Police, Arunachal Pradesh to put in place full security measures for all victims and their family members. Strict adherence shall be made of under the Witness Protection Scheme, 2018.

The learned Advocate General shall also apprise the Court regarding the steps taken by the State of Arunachal Pradesh for giving protection to minor victims of sexual assault, across the State of Arunachal Pradesh.

10. Considering the tenor of the order passed by the learned Special Judge, this Court feels that there is a emergent need of sensitizing the Special Judges posted in the POCSO Courts across the States of Arunachal Pradesh, Nagaland, Mizoram and Assam. Thus, the Director, Judicial Academy, Assam shall forthwith initiate the process for training and sensitizing of all Judicial

Officers dealing with POCSO Act cases in the States of Assam, Nagaland, Mizoram and Arunachal Pradesh.

11. Learned Advocate General, Arunachal Pradesh shall also ensure that intimation of this bail cancellation proceedings is also provided to the family members of the victims and in case, any of them is desirous of being heard, appropriate facilities and free legal aid shall be provided to them to address the Court through VC from the Itanagar Permanent Bench of the Gauhati High Court.

12. Copy of this order shall be placed before the Juvenile Justice Committee, Gauhati High Court, for necessary action.

13. Copy of this order shall also be communicated to the Registrar, Itanagar Permanent Bench of this Court as well as the Director General of Police, Arunachal Pradesh, forthwith.

14. List again on **27th July, 2023**.

CHIEF JUSTICE

Comparing Assistant