

GAHC010020142023



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

Case No. : I.A.(Crl.)/99/2023

ROBIN BORUAH
S/O LATE TIKESWAR BORUAH, RESIDENT OF VILLAGE GONDHIYA
POKADAL, PS BIHPURIA, DIST LAKHIMPUR,

VERSUS

THE STATE OF ASSAM AND ANR .
REPRESENTED BY PP ASSAM

2:MRS. SANTI MANDAL
W/O SRI NIKHIL MANDAL

VILLAGE DONGIBIL

PS BIHPURIA
LAKHIMPUR
ASSA

Advocate for the Petitioner : MS. S G BARUAH

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./42/2023

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Advocate for : MS. S G BARUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR .

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05.12.2023

Heard Ms. S.G. Baruah, learned counsel for the applicant and Ms. S. Jahan, learned Additional Public Prosecutor for the State of Assam.

2. This interlocutory application under Section 389 of the Code of Criminal Procedure, 1973, is filed for suspension of sentence and grant of bail to the applicant, namely, Robin Boruah, who has been convicted by the learned Special Judge(POCSO), Lakhimpur, North Lakhimpur, in Special(POCSO) Case No. 05/2018, vide Judgment and Order dated 05.01.2023 and sentenced to undergo rigorous imprisonment for 5(five) years and pay a fine of Rs.3,000/- i/d of payment of fine, simple imprisonment for

3(three) months for committing offence under Section 10 POCSO Act and also awarded rigorous imprisonment for 6(six) months for committing offence under Section 342 IPC.

3. The learned counsel for the applicant has submitted that there is no eye witness of the alleged incident and the applicant has been convicted purely on the basis of evidence of P.W.1 and circumstantial evidence. The prosecution has failed to prove the guilt of the applicant beyond all reasonable doubt. The learned trial court did not appreciate the evidence and materials available on record as such, the judgment is liable to be set aside. It is also contended that there are lots of infirmities in the impugned judgment and the applicant/appellant has good case on merit in succeeding the appeal.

4. In response, the learned Additional Public Prosecutor has admitted that there are some irregularity found in the judgment of the learned trial court and she has no objection if the prayer of the applicant is allowed.

5. I have considered the submissions of learned counsel for the parties.

6. Considering the submissions of learned counsel for the parties as well as the period of sentence, the prayer of the applicant/appellant is allowed. The sentence imposed on the applicant/appellant in Spl. (POCSO) Case No. 05/2018, against the applicant/appellant by the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur, vide judgment and order dated 05.01.2023 is suspended, subject to the following conditions:-

- a) The applicant/appellant is directed to be released on bail on his furnishing a bond of Rs. 50,000/- (Rupees Fifty Thousand) only, with one surety of the like amount to the satisfaction of the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur.
- b) The applicant/appellant shall not indulge in any criminal activities during the period of suspension of sentence.
- c) The applicant/appellant shall not leave the jurisdiction of the concerned Court.

d) It is made clear that this Court has not delved into the merits of the appeal.

7. With the aforesaid observations, this Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant