

GAHC010033922023



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

Case No. : I.A.(CrI.)/215/2023

SHYAMAL BASUMATARY
S/O KULENDRA BASUMATARY
RESIDENT OF LONGPATIA
PS SONARI
DIST CHARAIDEO
ASSAM
VERSUS
THE STATE OF ASSAM AND ANR .
REPRESENTED BY PP ASSAM
2:SRI SUBHASH BORO
S/O LATE SUREN BORO
RESIDENT OF BORMANTHI
MAJGAON
PO AND PS BOKAJAN
DIST KARBI ANGLONG
ASSAM 782480

Advocate for : MR. J C GOGOI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR .

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

16.08.2023

(M. Zothankhuma, J.)

1. Heard Mr. B. Islam, learned counsel for the applicant. Also heard Ms. B.

Bhuyan, learned Additional Public Prosecutor for the State. None appears for the respondent no.2 though the respondent no.2 has filed written objection to the application.

2. This is an application filed under Section 389 Cr.P.C for suspending the sentence passed against the applicant in pursuance to the impugned judgment and order dated 22.12.2022 passed by the Special Judge (POCSO), Karbi Anglong, Diphu in POCSO Case No.10/2022, arising out of Bokajan P.S Case No.206/2021.

3. The applicant had been convicted under Section 366 IPC and under Section 6 of the POCSO Act, 2012. By the above impugned judgment and order the applicant was sentenced to undergo 4 (four) years rigorous imprisonment under Section 366 IPC with a fine of Rs.5,000/-, in default to suffer simple rigorous imprisonment for 2 (two) months. He was further sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs.10,000/- in default, to undergo simple imprisonment for two months under Section 6 of the POCSO Act.

4. The applicant's counsel submits that the applicant and the victim girl were having a relationship which resulted in a marriage between the parties. Thereafter one son was born to them on 18.08.2022. He submits that the said fact of the applicant and the victim girl being in a relationship is not in dispute, as can be seen from the FIR dated 04.11.2021 submitted by the victim girl's father and also in his written objection filed against the present application.

5. The applicant's counsel further submits that the Medical Report made by the Doctor who had examined the victim girl on 28.02.2022 is to the effect that the victim girl was above 17 years and below 19 years. As such, the age of the

victim, i.e. the applicant's wife would have been above 18 years at the time she eloped with the applicant, i.e. on 04.11.2021. The applicant' counsel thus prays that the sentence should be suspended and the applicant should be released on bail.

6. Ms. B. Bhuyan, learned Additional Public Prosecutor submits that the Birth Certificate of the victim girl shows that she was born on 30.11.2006, which would result in the victim girl being approximately 15 years at the time she eloped with the applicant. She accordingly submits that the applicant should not be released on bail and the sentence should not be suspended, as the victim girl was a child at the time of the incident. .

7. We have heard the learned counsels for the parties.

8. As can be seen from the submissions made by the counsels for the parties, the applicant and the victim girl had eloped and apparently married. Due to the relationship between the parties, a child has also been born to them. We have also perused the written objection filed by the respondent no.2, wherein he has stated in paragraph-4 that his daughter had a love affair with the applicant for the last 3 years and that his daughter had voluntarily eloped with the applicant on 04.11.2022 and had lived together as husband and wife, after putting vermilion on the victim girl. The father of the victim girl also stated that a male child was born out of the said wedlock and the victim girl has been happily living in the house of the applicant with her new born child.

From the above paragraph, it appears that there is a typographical mistake with regard to the date of incident, which should have been 04.11.2021, instead of 04.11.2022.

9. Be that as it may, in view of paragraph-4 of the written objection

submitted by the respondent no.2, the sentence imposed upon the applicant is suspended and the applicant is allowed to go on bail. The applicant is allowed to go on bail, on furnishing a bail bond of Rs.5,000/-, with one surety of like amount to the satisfaction of the learned Trial Court.

10. The I.A.(Crl.) is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant