

GAHC010036862023



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

I.A.(CrI.)/124/2023

BIMAN DAS
S/O DINA NATH DAS
VILL.-SENCOWA BALICHAPORI
P.O.- CHAMAGURI SATRA MAJULI
DIST.- MAJULI
ASSAM
PIN- 785110.

VERSUS

THE STATE OF ASSAM AND ANR.
TO BE REP. BY THE P.P.
ASSAM.

2:BHABA KANTA DAS
S/O BUPARAM DAS

VILL.-SENCOWA BALICHAPORI

P.O.- CHAMAGURI SATRA MAJULI

DIST.- MAJULI
ASSAM
PIN- 785110.

Advocate for : MR. K KALITA
Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : --15.05.2023

- 1.** Heard Mr. A. Ahmed, learned counsel for the applicant Biman Das. Also heard Mr. K.K. Das, learned Addl. P.P., Assam.
- 2.** The applicant has filed this application under Section 389 Cr.PC for suspension of order of conviction and sentence passed by the learned Special Judge, Majuli in connection with Special Case No. 04/2021, convicting the applicant/appellant u/s 376 IPC and sentencing him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs. 10,000/- with default stipulation.
- 3.** I have considered the submissions at the bar.
- 4.** It is submitted on behalf of the applicant that there is every possibility the applicant will not be held guilty of offence u/s 376 IPC because the applicant did not commit rape on the victim. He had a love affair with the victim but the victim finally got him entangled in this case with deplorable allegations.
- 5.** The learned Addl. P.P. has raised serious objection stating that several witnesses have stated that the applicant has uploaded obscene video with the image of the victim.
- 6.** It is submitted on behalf of the applicant that no date of occurrence has been mentioned by the victim. The medical report is in favour of the accused. There is no allegation of any obscene video being recorded. The trial court did not consider the DW's evidence.
- 7.** The learned counsel for the applicant has relied on the decision of the Hon'ble Supreme Court of India in *Kiran Kumar v. State of M.P.* wherein it has been observed that

“1. *Leave granted.*

The appellant stands convicted under Sections 450, 376, 325 and 506 of the Indian Penal Code. The maximum sentence imposed on him is imprisonment for a period of seven years on the second count. He filed an appeal and that is pending. But during the pendency of the appeal he moved an application for suspension of the sentence but that was rejected by the High Court as per the impugned order. We are also told that the High Court has not directed the appeal to be boarded for hearing and disposal.

2. *This Court has held in Bhagwanram Shinde and Ors. v. State of Gujarat 1999 (39) ACC 302 (SC), that when a person is convicted and sentenced to a short term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes, infructuous so far as the Appellant is concerned. It does not mean that the Appellate Court should suspend the sentence, if its consequence would be dangerous to the society or any other similar difficulties."*

8. I have considered the submissions at the bar and I have also perused the case record.

9. Considering all aspects, I deem it proper to grant bail to the applicant. The applicant is enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the trial court. The trial court may impose conditions which the court deems fit and proper. The operation of conviction and sentence impugned by the applicant is suspended until further orders.

In terms of above, the IA is disposed of.

JUDGE

Comparing Assistant