

GAHC010040022023



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

Case No. : Crl.A./68/2023

BHAIRAB BARMAN
S/O LATE RAGHURAM BARMAN,
VILL.- ANANDAPUR C BLOCK, UTTAR CHUPA, P.O.- DIGHALDONGA, P.S.-
BARBARI, DIST.- BAKSA, ASSAM, PIN- 781343.

VERSUS

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

2:GITUMANI KALITA
W/O DIPUL KALITA

VILL.- ANANDAPUR C BLOCK
UTTAR CHUPA
P.O.- DIGHALDONGA
P.S.- BARBARI
DIST.- BAKSA
ASSAM
PIN- 781343

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(Crl.)/146/2023

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S/O LATE RAGHURAM BARMAN
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Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 10.08.2023

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by
Mr. I.U. Choudhury, learned counsel for the applicant. Mr. R.J. Baruah,
learned Public Prosecutor for the State/respondent No.1.

This is an application under Section 389 Cr.P.C. praying for

granting bail suspending sentence pending appeal to the applicant in connection with the judgment and order dated 19.01.2023 passed by the Id. Special Judge(POCSO), Baksa in Spl.(POCSO) Case No. 34/2022, whereby convicting the accused/applicant under Section 8 of POCSO Act and sentenced him to undergo R/I for 4(four) years and to pay a fine of Rs.10,000/- i/d to suffer rigorous imprisonment for another six months.

The learned Senior counsel for the applicant submits that since the date of judgment, the applicant has been languishing in jail custody. It is also submitted that there are lots of contradictions in the evidence of the witnesses and there is every possibility of acquittal of the applicant in the case. Considering these aspects, the applicant be released on bail during pendency of the appeal.

On the other hand, Mr. R.J. Baruah, learned Additional Public prosecutor has raised objection in granting bail to the applicant during pendency of the appeal as he submits that the applicant has been convicted for 4 years under Section 8 of POCSO Act. It is further submitted by the learned Additional Public Prosecutor that the statement of the victim and other witnesses have supported the fact that the applicant had committed the offence as alleged in the FIR. As such, bail may not be granted at this stage.

I have considered the submissions made by the learned counsel for the parties.

Considering the nature of offence as well as the fact as reflected in the case record, the prayer of the applicant is allowed.

Accordingly, the accused-applicant, named above, shall be released on

bail suspending the sentence during appeal in connection with Special POCSO Case No. 34/2022, under Section 8 of POCSO Act, subject to the following conditions :

(i) The applicant shall furnish a bail bond of Rs.25,000/- with two suitable sureties of the like amount to the satisfaction of the learned Special Judge, Baksa;

(ii)The applicant shall appear to the investigating officer of Barbari Police Station, District-Baksa under which he resides and provides a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switch on all the times;

(iii)If the applicant has a passport, he shall surrender the same to the court of learned Special Judge, Baksa and shall not travel out of the country without prior permission of the learned trial court;

(iv)The applicant shall not contact nor visit nor offer any inducement, threat or promise to any of the persons acquainted with the case;

(v)More specifically, the applicant shall neither contact nor interact whether directly or indirectly with the victim or her family members any manner whatsoever;

(vi)The applicant shall also not visit the locality in which the victim resides, and

(vii)The applicant shall not indulge in any kind of unlawful act that would prejudice the pending proceeding.

Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.

In view of the above, I/A stands disposed of.

JUDGE

Comparing Assistant