

GAHC010042972020



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

Case No. : Crl.A./114/2020

JOHIRUL ISLAM @ JAHIRUL ALI
S/O- LATE JABED ALI, R/O- GHILAGURI, P.S. AND DIST.- BONGAIGAON,
ASSAM, PIN- 783380.

VERSUS

STATE OF ASSAM AND ANR
REP. BY THE PUBLIC PROSECUTOR, ASSAM.

2:INNUS ALI
S/O- MOHOR ALI
R/O- NAMALPUR
P.S. BONGAIGAON
DIST.- CHIRANG
ASSAM
PIN- 783394

Advocate for the Petitioner : MR. N AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

25.05.2023

Heard Mr N J Dutta, learned counsel for the applicant/appellant and Mr D Das, learned Additional Public Prosecutor for the State of Assam. Also heard Mr A R Sikdar,

learned counsel appearing on behalf of the respondent No. 2.

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/appellant, namely, Johirul Islam @ Jahirul Ali, who has been convicted by the learned Special Judge, Chirang, Kajalgaon, in Special (P) Case No. 04 (Basu) of 2018, vide Judgment and Orders dated 21.12.2019 and subsequent order dated 04.01.2020, whereby he has been sentenced to undergo Rigorous Imprisonment for a period of 10 (ten) years and to pay a fine of Rs. 10,000/- only, and in default to undergo Simple Imprisonment for 6 (six) months for the offence committed under Section 6 of the POCSO Act.

3. It is submitted by the learned counsel for the accused/applicant that the accused/applicant is a newly married person and he has a minor son of 3 years age and except the accused/applicant, no one is alive in his family to look after his wife and child and in such a situation his family will die in financial crisis without him.

4. It is further submitted by the learned counsel for the accused/applicant that as per medical report, there is no injury on the private parts of the victim, as such, the learned trial Court has wrongly appreciated the evidence of the witnesses and the medical report and therefore, has wrongly convicted the accused/applicant. Learned counsel for the accused/applicant further submits that there is every likelihood of acquittal of the accused/applicant in the case. Accordingly, it is prayed that the applicant may be enlarged on bail, by suspending the sentence during pendency of the appeal.

5. On the other hand, Mr D Das, learned Additional Public Prosecutor by submitting written objection has vehemently opposed to the prayer of the accused applicant and stated that the victim was below 13 years of age and in her statement recorded under Section 164 CrPC, she has directly implicated the accused applicant for committing sexual intercourse upon her. Therefore, he submits that under such circumstances, bail may not be granted to the accused applicant by suspending the sentence, during pendency of the appeal.

6. Mr A R Sikdar, learned counsel for the respondent No. 2/informant stated that there are sufficient materials found against the accused/applicant in the evidence of witnesses and as such, has opposed to the bail prayer of the accused applicant.

7. I have heard the submissions made by the learned counsel for the parties. I have also perused the record as well the medical report and the statement of the victim recorded under Section 164 CrPC.

8. From the medical report of the victim, it appears that the victim had not attained puberty and on local examination by the doctor, he found tenderness in the genital area of the victim and when the doctor touched the private part of the victim, she felt pain in that area.

9. In a recent decision, rendered in the case of ***Omprakash Sahni vs- Jai Shankar Chaudhury & Another***; reported in **2023 Livelaw (SC) 389**, Hon'ble Supreme Court has held as under:-

“.....To put it in other words something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here and there, in the case of prosecution. Such would not be a correct approach.....”

10. In the light of the Supreme Court decision as noted above, I am not inclined to re-appreciate the evidence at the stage of considering the bail application under Section 389 (1) CrPC. I do not find any palpable legal infirmity requiring this Court to exercise the powers conferred under 389 (1) of the CrPC.

11. In view of the above, I do not find it appropriate to suspend the sentence of the accused/applicant, during the pendency of the appeal. Accordingly, the prayer of the accused/applicant is rejected.

12. Interlocutory Application stands disposed of.

13. The connected appeal be listed in due course.

JUDGE

Comparing Assistant