

GAHC010089842021



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

Case No. : I.A.(CrI.)/273/2021

PANKAJ HAZARIKA
S/O SRI RAMNATH HAZARIKA
R/O VILL- 1 NO. UDAIPUR
UNDER DEMOW POLICE STATION
DIST-SIVASAGAR
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:MS JANMONI DAS
D/O SRI HARESWAR DAS
R/O VILL NO. 1 UDAIPUR
UNDER DEMOW POLICE STATION
DIST-SIVASAGAR
ASSAM
PIN-785697

Advocate for : MR P KATAKI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

16.03.2023

Heard Mr. P. Kataki, learned Counsel for the applicant. Also heard Mr. P. Borthakur, learned Public Prosecutor for the State respondent No. 1 and Mr. D. Chakraborty representing for the respondent No.2/victim.

This is an appeal filed under Section 389 (2) of the Code of Criminal Procedure, 1973 praying for suspension of sentence by challenging the judgment and order dated 23.04.2020, passed by the learned Special Judge, Sivsagar, in Special POCSO Case No.27/2018, convicting the applicant under Section 4 of the POCSO Act, and sentencing him to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs. 10,000/-(rupees ten thousand) in default to undergo further R/I for a period of 6(six) months.

It is submitted by the learned counsel for the applicant, Mr. P. Kataki, that the accused/applicant is innocent and he has not committed any offence as alleged in the First Information Report(FIR). The learned Special Judge has passed the order of conviction without considering the fact that the prosecution has adduced cogent evidence and also not decided the fact as whether the victim was a minor at the time of the incident. Thus, the learned Trial Court. Further, the learned counsel for the applicant has submitted that the FIR was lodged only due to some misunderstanding. Thus, he accordingly prays for suspension of sentence and he is ready to co-operate with the further investigation of his case, as and when required.

In this regard, Mr. P. Borthakur, learned Public Prosecutor has submitted that in the instant case although the case of the prosecutrix is not supported by the other evidence and circumstances of the case. Moreover, the case in hand being under the POCSO Act, the accused/applicant has also a duty to rebut the legal presumption under Section 29 of the POCSO Act. And accordingly, raised objection in the prayer made by the applicant.

On the other hand Mr. D. Chakraborty, learned counsel for the respondent No.2/victim has raised no objections on the ground of granting bail to the accused applicant till disposal of the Criminal Appeal being No.Crl.A./120/2021.

After hearing the submissions made by the learned Advocates of both sides, as well as upon seeing the applicant was granted bail and he faced the trial without any default. In the meantime, it is also seen that the respondent No.2, her engaged counsel has not raised any objections on the prayer made by the applicant till disposal of the criminal appeal. So considering the entire submissions made by the parties as well as considering the conduct of the accused/applicant, I find it appropriate to grant the bail to the applicant at this stage.

Accordingly, it is provided that the accused/applicant, namely Pankaj Hazarika be enlarged on bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, Sivsagar, till disposal of the present criminal appeal.

With above observations, this interlocutory applications stands dispose of.

JUDGE

Comparing Assistant