

GAHC010102872022



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

Case No. : Crl.Pet./487/2022

DEVENDRA KUMAR
S/O SHRI MANGEY RAM
PERMANENT ADDRESS-
VILL AND P.O. PURBALIYAN
DIST. MUZZAFARNAGAR
UTTAR PRADESH, PIN-251203
PRESENTLY RESIDNG AT-
8 SF, GREEN VIEW 1 A TO Z COLONY,
MEERUT MODIPURAM
UTTAR PRADESH, PIN-250110

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28.02.2023

Heard Mr. N.K. Kalita, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned APP appearing for the State.

2. By this criminal petition filed under section 482 Cr.P.C., the petitioner has prayed for quashing of the order dated 11.04.2022, passed by the learned Special Judge, POCSO, Kamrup (Metropolitan), Guwahati in Sessions Case No. 275/2018. By the impugned order, the cross-examination of PW-1 and PW-2 was dispensed with.

3. The learned APP has opposed the prayer for quashing of the order dated 11.04.2022.

4. By referring to the contents of the petition dated 11.04.2022, being petition nos. 320/2022 and 323/2022, the learned counsel for the petitioner has projected that till 12.00 noon of 12.04.2022, the prosecution witnesses were not present in the Court room and moreover, the learned counsel for the petitioner has prayed for dispensing with the personal appearance of the petitioner. Thereafter, at about 12.00 noon, when no PWs turned up, the counsel for the petitioner left home to take care of his mother and at about 12.45 PM, he received a phone call from the learned trial Court informing him to come and cross-examine the PW-1 and PW-2. The counsel representing the petitioner filed a petition at 2.30 pm praying for reserving the cross-examination, which was refused by the learned trial Court.

5. The Court takes note of the fact that the petitioner is accused of offence committed under section 8 of the POCSO Act, under which the prescribed punishment is not less than 3 years and up to maximum 5 years of imprisonment.

6. As the PW-1 and PW-2 were not present at 10.30 AM, the Court is of the considered opinion that on a payment of reasonable cost to cover for the

flight fare to and fro from Mumbai, the ends of justice would be met by allowing the learned counsel for the petitioner to cross-examine PW-1 and PW-2.

7. In view of above, the two-way cost of travel is assessed at Rs.12,500/- (Rupees twelve thousand five hundred only) per person. Accordingly, the petitioner is directed to deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) before the learned trial Court. Subject to deposit being made on the next date fixed, the learned trial Court shall fix a date for appearance for the PW-1 and PW-2 and for their cross-examination.

8. With the aforesaid observation, the impugned order dated 11.04.2022, insofar as it relates to closing opportunities to cross-examine PW-1 and PW-2 is conditionally set aside on condition that the cost be deposited positively on the next date fixed before the learned trial Court. It is provided that this order shall lapse and lose its efficacy if such cost is not deposited on the next date, and the impugned order shall stand restored.

9. The petitioner shall appear before the learned trial Court on 15.03.2023, which is the next date fixed and produce a certified copy of the order along with the deposit.

10. Accordingly, this criminal petition stands conditionally allowed to the extent as indicated above.

JUDGE

Comparing Assistant