

GAHC010110712022



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

Case No. : I.A.(CrI.)/274/2022

PIYAR UDDIN LASKAR
S/O AMIN AHMED LASKAR RESIDENT OF VILLAGE DHANIPUR
PO AND PS LALA
DIST HAILAKANDI
ASSAM 788163

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:NOZIR AHMED CHOUDHURY
S/O LATE ASADDAR ALI CHOUDHURY
RESIDENT OF WARD NO. X
LALA TOWN
PS LALA
DIST HAILAKANDI
ASSAM 788163

Advocate for : MR Z ALAM
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 09-06-2023
(M. Zothankhuma, J)

Heard Mr. Z Alam, learned counsel for the applicant. Also heard Ms. S

Jahan, learned Additional Public Prosecutor appearing for the State respondent.

2. The applicant's counsel prays that the sentence should be suspended and the applicant should be released on bail on the ground that the evidence adduced by the various witnesses do not show that the offence could have been committed by the applicant.

3. The learned counsel for the applicant submits that the evidence shows that the victim boy and two of his friends were playing and thereafter his two friends had left the field where they were playing. Consequent to the above, the victim boy has stated that the appellant had taken the boy into an unused toilet of the college, wherein the applicant had put his penis into his mouth and also touched the victim boy's anus with his fingers. Also when the boy shouted, the applicant had bitten the victim boy's cheeks. Thereafter, the boy took a bath. The Doctor, who examined the victim boy stated that he found semen in the boy's mouth and also in the boy's anus.

4. The learned counsel for the applicant submits that the inconsistencies in the evidence would require this Court to give the benefit of doubt to the applicant. Accordingly, the sentence should be suspended and the applicant should be released on bail.

5. Ms. S Jahan, learned Additional Public Prosecutor and Mr. MH Rajbarbhuiyan, learned counsel for the informant submit that the evidence adduced clearly shows the involvement of the applicant with the crime and accordingly, the application should not be allowed.

6. We have heard the learned counsels for the parties.

7. The present case relates to the unnatural act committed upon the 10 year old boy by the applicant, for which Lala P.S. Case No. 212/2018 under Section

377 IPC read with Section 4 of the POCSO Act, 2012 had been registered against the applicant. After charge-sheet had been filed and witnesses have been examined, the learned Trial Court had convicted the applicant under Section 377 IPC read with Section 4 of the POCSO Act, 2012.

8. The applicant was thereafter sentenced to undergo rigorous imprisonment for life along with a fine of Rs. 20,000/- for the offence under Section 4 of the POCSO Act, 2012, in default rigorous imprisonment for six months. Further, he was sentenced to undergo rigorous imprisonment for 10 years for the offence under Section 377 IPC.

9. On considering the Lower Court records and the evidence recorded by the learned Trial Court, we are of the view that the sentence awarded should not be suspended and the applicant should not be enlarged on bail, at this stage, as there are incriminating evidences recorded by the learned Trial Court.

10. Accordingly, the application stands dismissed.

JUDGE

JUDGE

Comparing Assistant