

GAHC010113942023



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

Case No. : I.A.(Crl.)/445/2023

AYNAL HAQUE
S/O LATE TUTU MIYA, VILL.- BHOGRANDA, P.S.- BARPETA, DIST.-
BARPETA, ASSAM.

VERSUS

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

2:MAJIBAR RAHMEN
S/O LATE SONA ULLAH

VILL.- KHABLAR VITHA

P.S. AND DIST.- BARPETA
ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./186/2023

AYNAL HAQUE
S/O LATE TUTU MIYA

VILL.- BHOGRANDA

P.S.- BARPETA

DIST.- BARPETA
ASSAM.

VERSUS

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

2:MAJIBAR RAHMEN
S/O LATE SONA ULLAH

VILL.- KHABLAR VITHA

P.S. AND DIST.- BARPETA
ASSAM.

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.11.2023

- 1.** Heard Mr. A. Ahmed, learned counsel for the applicant/appellant. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State respondent as well as Mr. J. Islam, learned counsel for the informant.
- 2.** This application under section 389 of the Code of Criminal Procedure, 1973, has been filed by the applicant/appellant, namely, Aynal Haque, praying for suspension of sentence and his release on bail during the pendency of

connected appeal, which has been registered as Criminal Appeal No. 186/2023.

3. By preferring the said appeal, the present applicant/appellant has impugned the judgment and order dated 12.05.2023, passed by learned Additional Sessions Judge-cum-Special Judge (POCSO), Barpeta in Special POCSO Case No. 16/2022, whereby the present applicant/appellant has been convicted under Section 376 (1) of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 10 years, and also to pay a fine of Rs. 10,000/- and in default of payment of fine, to undergo further simple imprisonment for 2 years.

4. The facts relevant for consideration of the instant interlocutory application, in brief, are as follows:

- (i)** On 11.04.2021, one Mujibur Rahman Ali lodged an FIR, wherein it has been alleged that the present applicant/appellant had forceful physical relationship with the daughter of the first informant. It is further alleged that though the incident occurred on 15.02.2020 at 9.30 PM and after the incident, the victim informed about the incident to the mother of the applicant/appellant. However, she asked her not to disclose it to anyone and assured her that some action would be taken. However, nothing happened and later on, the victim was

threatened of dire consequences.

- (ii)** On receipt of the said FIR, the police registered a case i.e., Barpeta P.S. case no. 824/2021 under section 120B/376/506 of the Indian Penal Code read with section 4 of the POCSO Act, 2012 and after completion of the investigation, laid the charge-sheet against the present applicant/appellant only under Section 376 of the Indian Penal Code.
- (iii)** During the trial the learned Trial Court framed charges under Section 376 of the Indian Penal Code, read with Section 6 of the POCSO Act, 2012, against the present applicant/appellant to which he pleaded not guilty and claimed to be tried.
- (iv)** During the trial, the prosecution side examined seven prosecution witnesses, including the Medical Officer and the Investigating Officer. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the present applicant/appellant pleaded his innocence. However, he did not adduce any evidence in defence. After culmination of the trial, by the judgment which has been impugned in the connected appeal, the present applicant/appellant was convicted and sentenced in the manner as already described herein before.

5. Learned counsel for the applicant/appellant has submitted that the applicant/appellant and the victim were having relationship which has been ignored by the learned Trial Court.

6. It is further submitted by learned counsel for the applicant/appellant that the FIR was lodged after a delay of more than one year and no valid cause has been shown for the delay in the FIR which itself falsify the prosecution case.

7. It is further submitted that learned Trial Court did not consider that the delay in this case was not properly explained by the prosecution side. Learned counsel for the applicant/appellant has also submitted that the victim had suppressed her real age before the learned trial court, as is evident from the evidence on record. She had not disclosed about her relationship with the applicant/appellant which is disclosed in the testimony of PW-4 as well as PW-5.

8. Learned counsel for the applicant/appellant has submitted that the evidence on record does not justify the conviction of the present applicant/appellant under Section 376 of the Indian Penal Code.

9. Learned counsel for the applicant/appellant has further submitted that there is every possibility of present applicant/appellant getting a verdict of acquittal in the pending appeal and hence, he has prayed for allowing the present applicant/appellant to be released on bail during the pendency of the

appeal after suspending the sentence which has been imposed on him by the learned Trial Court.

10. On the other hand, learned Additional Public Prosecutor has opposed the prayer for suspension of sentence during the pendency of the connected appeal and has submitted that the present applicant/appellant has been convicted by the learned Trial Court after a full trial and proper consideration of evidence against him which was available on record.

11. In the instant case, the applicant has been sentenced for a period of 10 years. In "**Bhagwan Rama Shinde Gosai and others vs. State of Gujarat**" reported in **(1999) 4 SCC 421**, Hon'ble Apex Court has observed as follows:

"When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to

practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted."

12. In the instant case, the applicant/appellant has filed the statutory appeal under Section 374 of the Code of Criminal Procedure, 1973, and though the learned counsel for the applicant/appellant has raised certain important issues, however, same may be considered only in the main appeal which is pending before this Court.

13. However, this Court is also not oblivious of the practical situation, for there is every likelihood that in normal course the connected appeal would be coming up for hearing at a very belated stage, which would otherwise prejudice the rights of the applicant/appellant if ultimately he is found to be innocent in the connected appeal.

14. In view of the observations made by Hon'ble Apex Court (quoted herein above) as well as facts of this case, this Court is of the considered opinion that this is a fit case where the sentence imposed on the present applicant/appellant by the Trial Court by the judgment and order which has been impugned in the connected appeal is required to be suspended during the pendency of the connected appeal.

15. In view of the above discussion, the sentence imposed on the applicant/appellant, namely, AynalHaque, by the judgment and order dated 12.05.2023 passed by Learned Additional Sessions Judge-cum-Special Judge (POCSO), Barpeta in Special (POCSO) Case No. 16/2022, which has been impugned in the connected Criminal Appeal No.186/2023, is hereby suspended during the pendency of the said criminal appeal and the applicant/appellant, namely, AynalHaque, is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only), with one surety of like amount subject to the satisfaction of learned Additional Sessions Judge-cum-Special Judge (POCSO),Barpeta subject to following conditions:

- i.** That the applicant/appellant shall not leave the State of Assam during the pendency of Criminal Appeal No.186/2023 before this Court without prior leave of the learned Additional Sessions Judge-cum-Special Judge (POCSO) Barpeta.
- ii.** That the applicant/appellant shall not directly or indirectly make any inducement, threat or promise to the victim girl during the pendency of the Criminal Appeal No.186/2023.
- iii.** That the applicant/appellant shall not commit any offence similar to that for which he has been convicted in the Special

(POCSO) Case No. 16/2022.

16. With the above observations, this interlocutory application is hereby disposed of.

JUDGE

Comparing Assistant