

GAHC010161322022



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

Case No. : I.A.(CrI.)/462/2022

MD. NOOR HUSSAIN @ KARENG @ NUR HUSSAIN
S/O MOHAR ALI, R/O MAKRIBORI, P.S.-KRISHNAI, DIST-GOALPARA,
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

In

CrI.A. Case No. 197/2022

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

10.08.2023

Heard Mr. N. Uddin, learned counsel for the applicant. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam as well as Ms. D. Saikia, learned *Amicus Curiae*, who has been appointed to defend the cause of respondent no. 2.

This is an application under section 389 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Noor Hussain @ Kareng @ Nur Hussain praying for suspension of the impugned judgment dated 28.06.2022 passed in Sessions Case No. 13/2019 by learned Special Judge, Goalpara, whereby, the present appellant was convicted under section 6 read with section 18 of POCSO Act as well as under section 10 of the POCSO Act and was sentenced to undergo rigorous imprisonment for 5(five) years and to pay a fine of Rs. 10,000/- and in default to undergo rigorous imprisonment for 3(three) months under section 18 as well as rigorous imprisonment of 5(five) years and to pay a fine of Rs. 10,000/- in default of payment of fine to undergo further rigorous imprisonment for 3(three) months under section 10 of the POCSO Act. Both the sentences were directed to run concurrently.

Learned counsel for the applicant/appellant has submitted that the appellant has a fair chance of getting an order of acquittal in the instant appeal and on the said ground he has prayed for allowing the suspension of the Impugned Judgment during the pendency of this instant appeal and also prayed

to allow him to be released on bail.

Learned counsel for the applicant has submitted that the learned Trial Court had erred in coming to the conclusion regarding the age of the victim without following the procedure of section 34 of the POCSO Act, 2012.

It is also submitted that out of the total 6(six) witnesses examined by the prosecution side, only 2(two) witnesses were produced as eye-witness by the prosecution side.

It is submitted by learned counsel for the applicant/appellant that PW 3, who is the grand-mother of the alleged victim as well as PW 2, who is the victim himself were stated to be eye-witness, however, their statements were contradictory and same should not have been relied upon by the learned Trial Court in coming to the finding of a guilt of the present appellant.

On the other hand, learned Additional Public Prosecutor as well as learned *Amicus Curiae* has submitted that in Paragraph No. 12 of the impugned judgment, learned Trial Court has specifically mentioned as to why the victim was treated to be a minor under POCSO Act, 2012 and considering the heinous nature of offence under which the present applicant has been convicted, it is submitted by learned *Amicus Curiae* that the main appeal may be disposed of expeditiously and the present application under section 389 may be rejected.

I have considered the submissions made by learned counsel for both sides and have perused the materials on record. As a detail elaboration of evidence at the stage of grant or rejection of an application for bail has to be avoided inasmuch as same may have an effect on the right of the parties during hearing of the main appeal. However, on consideration of the impugned judgment as well as the grounds taken by the present applicant in his application under section 389 of the Code of Criminal Procedure, 1973 for suspension of the

conviction and sentence, I am of the considered opinion that this is not a fit case for suspension of the sentence of the present applicant, instead it would be appropriate that if the main appeal, Criminal Appeal No. 197/2022 be heard expeditiously.

In view of above, the application under section 389 of the Code of Criminal Procedure, 1973 filed by the present applicant/appellant is hereby dismissed with an observation that the Criminal Appeal No. 197/2022 shall be disposed of expeditiously.

This Interlocutory Application is hereby disposed of.

JUDGE

Comparing Assistant