

GAHC010173482023



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

Case No. : I.A.(CrI.)/807/2023

JAGADISH BORKAKATI,
S/O LATE BAPURAM BARKAKATI,
VILL.- PURANIGUDAM,
P.S.- SAMUGURI, DIST.- NAGAON, ASSAM.

VERSUS

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

2:ASIF ISLAM SAIKIA
S/O LATE TAJUL ISLAM SAIKIA
R/O DARA BUS COUNTER
M.D. ROAD NAGAON
P.O.- HAIBARGAON
P.S. AND DIST.- NAGAON
PIN- 782002 ASSAM

Advocate for the Petitioner : MR. M BISWAS
Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI

22.11.2023

Heard Mr. M. Biswas, learned counsel for the applicant. Also heard Ms. N. Das, learned Additional Public Prosecutor, Assam, appearing for the respondent No.1 and Mr. M.J. Quadir, learned counsel for the respondent No.2/informant.

This application has been filed by the applicant praying for releasing him on bail. The applicant was convicted under Section 6 of the POCSO Act by the Additional Sessions Judge cum Special Judge (POCSO), Nagaon, vide judgment dated 04.03.2023, passed in Special (POCSO) Case No.32(N)/2018 and sentenced to suffer life imprisonment and to pay a fine of Rs.50,000/-, in default, to suffer small imprisonment for six months.

Learned counsel for the applicant prays for suspension of the sentence which has been passed in relation to the impugned judgment dated 04.03.2023 by the Additional Sessions Judge cum Special Judge (POCSO), Nagaon in Special (POCSO) Case No.32(N)/2018. The applicant's counsel submits that the evidence adduced shows that the alleged incident of sexual assault had apparently taken place on 24.01.2018. However, FIR was filed by the father of the victim boy only one week later, i.e. 01.02.2018. He submits that the reason for filing the FIR one week later is on the ground that the son allegedly complained on 31.01.2018 that he felt pain in his anus. Learned counsel for the applicant submits that the victim boy should have felt pain immediately after the incident or even on the next day. However, the feeling of pain felt by the son only on 31.01.2018 after 8-00 P.M., casts doubt as to whether any sexual assault had been initiated by the applicant. He further submits that the appellant's daughter, who was a college student, gave tuition to the victim boy and because of the communication made by the applicant and his daughter to the father of the victim boy that they could not carry on with the tuition, the victim's father became angry and threatened them. He submits that to prove their case, three defence witnesses were also examined. He also submits that the applicant's family consists of his wife and three daughters, who are crammed into a three room house, which would make it nigh impossible for the applicant to have committed the crime. Learned counsel for the applicant thus prays that the applicant be granted bail.

On the other hand, learned Additional Public Prosecutor and the learned counsel appearing for the respondent No.2/informant submit that bail should not be granted to the applicant as he has been found guilty of the offence under Section 6 of the POCSO Act. They submit that the evidence of the victim boy, coupled with the evidence given by the Medical Officer, proves that the applicant had sexually assaulted the victim boy. They, accordingly, submit that the application should be dismissed.

After hearing the learned counsel appearing for the parties and considering the averments made in the application, we are of the view that the sentence should be suspended. Accordingly, the sentence awarded is suspended and the applicant, namely, Jagadish Borkakati, is allowed to go on bail, on furnishing a bail bond of Rs.50,000/- (Rupees fifty thousand), with two sureties each of the like amount to the satisfaction of the Additional Sessions Judge cum Special Judge (POCSO), Nagaon.

Any observations or findings made in this order shall not be construed to be the final observations or findings made by this Court while hearing the appeal on merit.

This application is, accordingly, disposed of.

JUDGE

JUDGE

Comparing Assistant