

GAHC010175512022



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

Case No: I.A.(Crl.)/499/2022

PHANIDHAR SARMA .
S/O LATE DEBENDRA NATH SARMA
RESIDENT OF BAPUJI NAGAR
PS NOONMATI
DIST KAMRUP M ASSAM

VERSUS

STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:PRANAB SHARMA
S/O-BASANTA SARMA
R/O SALBARI
P.S NOONMATI
PIN-781020
DIST KAMRUP(METRO)

Advocate for : MR N J DAS
Advocate for : PP
ASSAM appearing for STATE OF ASSAM

In Case No. : Crl.A./214/2022

PHANIDHAR SARMA .
S/O LATE DEBENDRA NATH SARMA
RESIDENT OF BAPUJI NAGAR, PS NOONMATI, DIST
KAMRUP M ASSAM

VERSUS

STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:PRANAB SHARMA
S/O- BASANTA SARMA
R/O- SALBARI
P.S- NOONMATI

PIN-781020
DIST-KAMRUP(M

Advocate for the Petitioner : MR N J DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

08.08.2023

1. Heard Mr. N. J. Das, learned counsel for the applicant. Also heard Mr. K. K. Parashar, learned Additional Public Prosecutor for the State of Assam.
2. This is an application filed under Section 389(3) of Code of Criminal Procedure for suspension of sentence in connection Judgment and Order dated 30.06.2022 passed by the learned Special Judge, POCSO, Kamrup (M), convicting the accused/applicant under Section 10 of the Protection of Children From Sexual Offences Act, 2012 and sentencing him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 5000/- in default

to undergo simple imprisonment for 2 months in Sessions Case No. 89/2019.

3. The learned counsel for the applicant submits that there is no evidence except the evidence of the minor who is 4 years of age at the time of occurrence, therefore, only on the evidence of child witness without there being any corroborative evidence, the applicant ought not to have been convicted. The learned counsel further contends that there are discrepancies regarding time of commission of alleged crime inasmuch as the three PWs, namely PW-1, PW-2 and PW-3 has stated different time of occurrence. He further contends that the FIR was lodged at the very belated stage i.e. after one month.
4. This Court has given anxious consideration to the submissions made by the learned counsel for the applicant as well as perused the evidence of the victim and the aforesaid PWs. Also perused the statement of the victim recorded under Section 164 of Cr.P.C.
5. The arguments advanced by the learned counsel can be a subject matter of considerations at the time of final hearing of the matter inasmuch as after perusal of the statement of the victim recorded under Section 164 of Cr.P.C., her testimony before the trial Court below as well as of the evidence of PWs, this Court is of the opinion that this is not a fit case to grant bail and suspend the sentence in connection Judgment and Order dated 30.06.2022 passed by the learned Special Judge, POCSO, Kamrup (M), in Sessions Case No. 89/2019 at this stage.
6. Accordingly, I.A.(Crl.) stands dismissed.

7. As the LCR has already been received, list the Criminal Appeal No. 214/2022 in the month of September, 2023.

JUDGE

Comparing Assistant