

GAHC010177702019



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

Case No. : I.A.(CrI.)/731/2019

OSMAN ALI
S/O- KURAN ALI, VILL.- GOPALPUR, P.O. PAHUMARA, P.S. BAGHBAR,
DIST.- BARPETA, ASSAM, PIN- 781308.

VERSUS

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

2:AYNAL HAQUE
S/O- SHAHIN UDDIN
VILL.- GOPALPUR
P.O. PAHUMARA
P.S. BAGHBAR
DIST.- BARPETA
ASSAM
PIN- 781308

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./332/2019

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Advocate for : MR. N UDDIN

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.08.2023

Heard Mr. N. Uddin, learned counsel for the applicant. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State/respondent No.1

2. This is an application under Section 389 Cr.P.C. praying for granting bail to the applicant suspending sentence during appeal in connection with the judgment dated 13.06.2019 passed by the learned Special Judge, Barpeta in Spl.(POCSO) Case No. 11/2018, whereby the applicant was convicted under Section 6 of POCSO Act and sentenced to undergo rigorous imprisonment for 10(ten) years and to pay a fine of Rs.1,000/- in default simple imprisonment for

3(three) months.

3. Learned counsel for the applicant has submitted that if the applicant is the person who caused the victim pregnant, the DNA test is necessary to determine the paternity. But no such report had been proved by the victim or by the informant or by the investigating agency meaning thereby no DNA test was carried out to prove the paternity of the child of the victim. It is further submitted that before raising such point of seeking permission to carry out the DNA of the child by the applicant, it was already expired the time of investigation. Therefore, the applicant did not get any opportunity to prove his innocence that he is not the father of the child of the victim.

4. In support of his submission, learned counsel for the applicant has placed reliance on a case law- 2018 (3) AIR(BOM)(R)(Cri)350 (Ganesh Pralhad Sontakke vs. State of Maharashtra).

5. In the said case, it was held that the learned trial court failed to appreciate the suspect of the matter and convicted the applicant on the evidence of the prosecutrix and medical evidence. A perusal of the medical evidence shows that there was nothing significant brought on record against the applicant. All that documentary evidence and the evidence of doctor show that the prosecutrix was capable of sexual intercourse and that she was pregnant at the time of the medical examination. The clinching proof against the applicant would only have been DNA test, which was not conducted in the present case and the applicant was acquitted on this ground.

6. In response, learned Addl.P.P. has raised objection against the prayer of the applicant by stating that the defence has failed to establish that any other person had access on the victim girl other than the accused in causing such

pregnancy. Therefore, DNA test in the estimation of this Court is not at all necessary to consider the bail prayer of the applicant during appeal.

7. Learned Addl.P.P. has placed reliance on a case law- State of Punjab vs. Gurmit Singh reported in 1996 AIR SC 1393 which established the fact that the testimony of a victim of sexual assault alone can be the sole basis of conviction of an accused where her testimony inspires confidence, and is found to be trustworthy and reliable. It is also pointed out by learned Addl.P.P. that in the instant case, the statement of the victim has created an impression that she is a reliable and truthful witness. Under such backdrop, the prayer of the applicant may not be considered.

8. I have considered the submissions made by the learned counsel for the parties.

9. As per the statement of the victim, the applicant is a neighbor. One day, after she returned from school, the wife of the accused called her to her house. When she had gone there, she was put in a room where the accused was sitting who removed her clothes by shutting her mouth and committed rape on her. Subsequently, the applicant committed sexual intercourse with her for twice for some other days. When she wanted to disclose it to other, the applicant threatened her with dire consequence. It also appears from the evidence of the victim that earlier the brother of the accused killed the daughter of her paternal aunt, so out of fear she did not disclose it to others.

10. The nominal role indicates that the applicant has suffered custody of about 4 years since the days of pronouncement of judgment and that he has no other criminal involvements. Upon a conspectus of the forgoing about the medical report of the victim as recorded by the doctor and considering that fact

that no DNA test was conducted during investigation or after to prove the paternity of the child, this Court is persuaded to grant to the applicant suspension of sentence pending appeal subject to the following conditions:-

- (i) The applicant shall furnish a bail bond of Rs.50,000/- with two suitable sureties of the like amount to the satisfaction of learned Special Judge, Barpeta;
- (ii) The applicant shall appear to the investigating officer of Barpeta police station under which he resides and provides a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switch on all the times;
- (iii) If the applicant has a passport, he shall surrender the same to the court of learned Special Judge, Barpeta and shall not travel out of the country without prior permission of the learned trial court;
- (iv) The applicant shall not contact nor visit nor offer any inducement, threat or promise to any of the persons acquainted with the case;
- (v) More specifically, the applicant shall neither contact nor interact whether directly or indirectly with the victim or her family members any manner whatsoever;
- (vi) The applicant shall also not visit the locality in which the victim resides, and
- (vii) The applicant shall not indulge in any kind of unlawful act that would prejudice the pending proceeding.

11. Nothing in this order shall be construed as an expression of opinion on the

merits of the pending criminal appeal.

12. In view of above, I/A stands disposed of.

JUDGE

Comparing Assistant