

GAHC010195822022



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

**Case No. : I.A.(CrI.)/581/2022**

MD. RANA ALI @ RANA AHMED @ KHOLILUDDIN AHMED  
RESIDENT OF SAMUGURI TINIALI (BAZAR) PS AMGURI, DIST  
SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.  
REPRESENTED BY PP ASSAM

2:MS. LUCKY DAS  
D/O LATE ANANTA DAS  
RESIDENT OF NA PAM SAMUGURI  
PS AMGURI  
DIST SIVASAGAR  
ASSAM 78568

**Advocate for the Petitioner : MR R DAS**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 28.03.2023**

Heard Mr. R. Das, learned counsel for the applicant. Also heard Ms. N. Das, learned Additional Public Prosecutor for the State respondent.

The State respondent No. 1 has already filed their written objection in connection with this case.

However, the respondent No. 2 did not appear, though it is submitted by the learned counsel for the applicant that service has already been completed.

This is an application under Section 389 of the Code of Criminal Procedure praying for suspension of sentence and granting bail to the applicant during the pendency of the revision petition.

It is to be mentioned here that the applicant has already filed one appeal, being CrI. A. No. 240/2022, against the judgment and order dated 30.08.2022, passed by the learned Special Judge (POCSO), Sivasagar, in Special (POCSO) Case No. 07/2019, convicting the accused appellant for offences under Section 6 of the POCSO Act and under Section 506 of the Indian Penal Code and sentenced to undergo R.I. for a period of 10 (ten) years and also to pay a fine of Rs. 10,000/- and in default to undergo further R.I. for a period of 6 (six) months for conviction under Section 6 of the POCSO Act and also to undergo

R.I. for a period of 6 (six) months for the conviction under Section 506 of the Indian Penal Code.

It is submitted by the learned counsel for the applicant, Mr. R. Das, that the present applicant is the only earning member of the family and in his absence, his entire family is suffering and that too the wife of the applicant is also suffering from thyroid disorder, diabetes, fatty liver and cholesterol problem and undergoing treatment. Apart from that, the daughter of the applicant is also suffering from depression, anger and mood swing problem. The learned counsel for the applicant further submitted that no documents could be provided before the learned Special Judge (POCSO), Sivasagar, for determination of the age of the victim and in the same time, the I.O. could not furnish the DNA examination report, though it was collected during the investigation. Further it is submitted that the accused/applicant is a permanent resident of his addressed locality and there is no chance of absconding if the accused is enlarged on bail by suspending the sentence imposed on him. More so, there are good grounds of bail and there is every chance of succeeding in the appeal and accordingly, prayed for suspension of sentence and allowing the applicant to go on bail till disposal of the connected appeal.

In this context, the learned Additional Public Prosecutor, Ms. N. Das, has submitted that the present applicant has been convicted under Section 6 of the POCSO Act and accordingly, he was sentenced to undergo R.I. for 10 years along with fine. During the trial, the prosecution examined as many as 11 (eleven) numbers of witnesses including the M.O. and the I.O. But, the defence did not adduce any witness in support of their defence plea. However, the

defence duly cross-examined the witnesses and the statement of the accused was also recorded under Section 313 Cr.P.C. On the basis of the sufficient materials in the evidence of P.Ws., the learned Special Judge, POCSO, convicted the present applicant under Section 6 of the POCSO Act. The learned Additional Public Prosecutor also discussed the evidence adduced by the P.Ws., on the basis of which, the order of conviction was passed by the learned Special Judge, POCSO. Further, it reveals from the fact of the case that at the time of lodging the F.I.R., the victim was 6 (six) months pregnant and subsequently, she delivered a baby boy and thus, it reveals that there was repeated penetrative sexual assault on her. Accordingly, it is submitted by the learned Additional Public Prosecutor that there is sufficient evidence recorded by the learned Special Judge and on the basis of which, the order of conviction was passed and hence, considering the nature of offence, this is not a fit case to allow the petition under Section 389 Cr.P.C.

After hearing the submissions of learned counsels for both sides, I have also perused the case record of Special (POCSO) Case No. 07/2019 and it is seen that considering the evidence recorded by the learned Special Judge (POCSO) Sivasagar, conviction order was passed.

Considering the above aspect of the case and also considering the fact there is an allegation of aggravated penetrative sexual assault on the victim, I do not find it a fit case to allow the applicant to go on bail by suspending the sentence imposed upon him vide judgment and order dated 30.08.2022, by the learned Special Judge (POCSO), Sivasagar, in Special (POCSO) Case No. 07/2019, and accordingly, the same stands dismissed.

The interlocutory application stands disposed of in terms above.

**JUDGE**

**Comparing Assistant**