

GAHC010207272022



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

Case No. : I.A.(Crl.)/605/2022

TUNTUN CHANGMAI .
S/O LATE HARIPAD CHANGMAI,
RESIDENT OF AMULAPATTY ASEB COLONY, PS NAZIA, DIST SIVASAGAR,
ASSAM
VERSUS
STATE OF ASSAM
REPRESENTED BY PP ASSAM
2:KUNJO TAPNO
W/O TAPAN TAPNO
R/O NAZIRA LAKHIMI ALI
PS NAZIRA
DIST SIVASAGAR
ASSA

Advocate for the Petitioner : MS L DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

26.06.2023

(M. Zothankhuma, J.)

1. Heard Ms. L. Das, learned counsel for the applicant and Ms. B. Bhuyan, learned Additional Public Prosecutor for the State.

2. This is an application for suspending the sentence passed by the Court of the Additional Sessions Judge-cum-Special Judge (POCSO), Sivasagar in pursuance to the judgment dated 30.06.2022 passed in Special (POCSO) Case No. 18/2021, by which the applicant has been convicted under Section 6 of the POCSO Act and sentenced to undergo R.I. for 20 years and to pay a fine of Rs.10,000/-.

3. The applicant's counsel submits that the conviction of the applicant has been made on the basis of a fabricated story made by the prosecutrix and her parents. She submits that the evidence adduced would go to show that the applicant had gone to the shop of the parents of the prosecutrix on two occasions, when the parents were allegedly not in the shop. She submits that the applicant visiting the shop during the absence of the parents of the prosecutrix, on two different dates and two different timings, is too coincidental. She submits that the applicant is an electrician working with the APDCL and he had gone to check the theft of electricity to the shop, owned by the parents of the prosecutrix. She submits that a false case has been registered on account of the investigation conducted by the applicant against the parents of the prosecutrix, involving the theft of electricity.

4. Ms. B.Bhuyan, learned Additional Public Prosecutor, on the other hand submits that there is nothing to doubt the veracity of the prosecutrix's evidence and the evidence of the parents of the prosecutrix. Further, the Doctor's evidence shows that the hymen of the prosecutrix was absent, which implies that the applicant had indulged in penetrative sexual assault against the prosecutrix. She accordingly prays that the application should be rejected.

5. We have heard the learned counsels for the parties.

6. The submissions made by the applicant's counsel that the applicant had been directed to check the electricity theft involving the parents of the prosecutrix has not been stated in the evidence of the defence witnesses before the learned Trial Court. Further, in the examination under Section 313 Cr.P.C., the applicant has not made a mention with regard to the above facts stated today. The offence being a grievous offence, we do not find any material to suspend the sentence and release the applicant on bail at this stage.

7. Accordingly, the application is rejected. However, the observations and findings made in this order shall not be considered to be final observations and findings during the hearing of the appeal.

JUDGE

JUDGE

Comparing Assistant