

GAHC010210432022



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

Case No. : I.A.(Crl.)/739/2022

ATUL BISWAS
S/O JAGADISH BISWAS, VILL.- RAMNATHPARA, P.O.- KAMANDANGA, P.S.-
TAMARHAT, DIST.- DHUBRI, ASSAM, PIN- 783332.

VERSUS

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

2:MANJU RAY
W/O GUPI BISWAS
VILL.- RAMNATHPARA
P.O.- KAMADANGA
P.S.- TAMARHAT
DIST.- DHUBRI
PIN- 783332

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.09.2023

(Kalyan Rai Surana, Judge)

1. Heard Mr. A. A. R. Karim, learned counsel for the applicant. Also heard Ms. B. Bhuyan, learned senior counsel (Additional Public Prosecutor) for the State assisted by Ms. P. Borah, learned counsel for the State; and Mr. S. D. Roy, learned counsel

for the opposite party No. 2/informant.

2. This interlocutory application has been filed under Section 389 of the Code of Criminal Procedure, 1973 for suspension of sentence. By the judgment impugned in the connected appeal, the learned Special Judge, POCSO, Dhubri had convicted the appellant for committing offence under Section 375 of Indian Penal Code, punishable under Section 376 (AB) of Indian Penal Code as well as under Section 5 of the POCSO Act, punishable under Section 6 of the POCSO Act and sentencing him to undergo rigorous imprisonment for life as well as a fine of Rs.1,00,000/- (Rupees One Lakh) with default stipulation.

3. The learned counsel for the applicant has submitted that from the record, it would appear that immediately prior to the date of incident, there was a quarrel between two sides and thereafter a concocted case of raping of minor was manufactured. It is submitted that the date and time of alleged occurrence was about 5.00 p.m., on 31.08.2021, but the FIR was belatedly lodged on 02.09.2021. It is also submitted that from the evidence of PWs, contradiction would appear from the perusal of the conjoint reading of the evidence-in-chief of the PW- 1 as well as PW- 8 as well as statement under Section 161 of the Code of Criminal Procedure. It is also submitted that on a suggestion being given to the doctor (PW- 8), he has admitted that the injury in the female sexual organ can also be caused if a finger is inserted or any other objected is inserted. Accordingly, it is submitted that the continued incarceration of the applicant is not warranted during the pendency of the connected appeal. In support of his submissions, the learned counsel for the applicant has relied upon the following four cases, viz., (1) *Rajib Pator –Vs- State of Assam, 2009 (5) GLT 839*, (2) *State of Anunachal Pradesh –Vs- Samial Barju, 2011 (1) GLT 589*, (3) *Ajaha Ali –Vs- State of Assam, 2008 (3) GLT 55*, and (4) *Prakash Nath –Vs- State of Assam, 2007 (2) GLT 471*

- 4.** The prayer for bail is opposed by the learned Additional Public Prosecutor.
- 5.** On perusal of the materials on record, notwithstanding minor contradictions that appear in the evidence of the witnesses examined by the prosecution, it appears from the evidence, medical report and as per the FIR that the victim was aged about 11 years, which is as per the submissions made by learned counsel for the applicant was 12 years of age and from the medical report, it appears that hymen of the victim girl was ruptured.
- 6.** While evaluating the evidence for the purpose of bail, this Court does not find that the statement of the mother (PW-2) and the victim girl (PW-3) is unreliable in respect of allegation that the applicant had sexually assaulted in minor victim.
- 7.** Accordingly, this Court is of the considered opinion that this is not an appropriate case for grant of bail to the applicant in view of the finding of the learned Trial Court while convicting the applicant.
- 8.** Accordingly, the prayer for bail is refused.
- 9.** The learned counsel for the applicant prays for an expeditious hearing as the paper book is ready. In this regard order shall be passed in the connected appeal.
- 10.** This interlocutory application stands disposed of.

JUDGE

JUDGE

Comparing Assistant