

GAHC010210502022



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

Case No. : I.A.(Crl.)/630/2022

KALAM MANDAL
S/O HASAN MANDAL, VILL.- NO. 1 KAHIBARI (KIRTONPARA), P.S.-
ABHAYAPURI, DIST.- BONGAIGAON, ASSAM, PIN- 783384.

VERSUS

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

2:KHANJITA BASUMATARY
W/O MILAN BASUMATARY
R/O LANDANG PARA
P.S.- AMGURI
DIST.- CHIRANG
ASSAM
PIN

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./261/2022

KALAM MANDAL
S/O HASAN MANDAL

VILL.- NO. 1 KAHIBARI (KIRTONPARA)

P.S.- ABHAYAPURI

DIST.- BONGAIGAON
ASSAM

PIN- 783384.

VERSUS

THE STATE OF ASSAM AND ANR.
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ASSAM.

2:KHANJITA BASUMATARY
W/O MILAN BASUMATARY

R/O LANDANG PARA

P.S.- AMGURI

DIST.- CHIRANG
ASSAM
PIN- 783370.

Advocate for : MR. M U MAHMUD
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

30.01.2023

(Ajit Borthakur, J)

Heard Mr. M.U. Mahmud, learned counsel for the appellant/applicant. Also heard Ms. S. Jahan, learned Addl. P.P., Assam appearing for the State respondent No. 1 and Mr. J. Benerjee, learned counsel for the respondent No. 2.

2. By this interlocutory application under Section 389 (1) Cr.P.C., the accused applicant, who is convicted vide the impugned Judgment and Order, dated 14.09.2022, passed in Sessions Case No. 53(BGN)/2018 by the learned Sessions Judge, Bongaigaon and sentenced to undergo R.I. for 12 (twelve) years with fine of Rs.50,000/- (Rupees Fifty Thousand), in default, to undergo S.I. for another 6 (six)

months u/s 376(i) of the IPC, has prayed for suspension of sentence and to allow him to go on bail.

3. LCR is received in connection with Criminal Appeal No. 261/2022.

4. The prosecution case, in a nutshell, is that on 23.01.2018, the informant lodged an FIR before the Officer-in-Charge, Amguri P.S. alleging, *inter-alia*, that on 21.01.2018 at about 10 a.m., his wife went to Chapaguri to purchase fish, where she met the accused appellant/applicant. The appellant applicant, who was known to the informant's wife from earlier, provided her some intoxicated substance with food and took her to some unknown place at Chapaguri where he kept her for 3/4 hours and raped her and thereafter, fled away. When the informant's wife regained consciousness, she returned home and explained about the incident before her brother-in-law.

5. On receipt of the above FIR, Amguri P.S. Case No. 5/2018 u/s 376 of the IPC was registered, but, the case was transferred to Bongaigaon P.S. vide Bongaigaon P.S. Case No. 162/2018 as the place of occurrence falls under Bongaigaon P.S. After completion of investigation charge-sheet was laid against the accused applicant u/s 376 of the IPC and the Court of learned Sessions Judge, Bongaigaon, after due trial, convicted and sentenced the accused as stated above.

6. The state/respondent No. 1 has contested the application by filing a written application.

7. Mr. M.U. Mahmud, learned counsel for the appellant/applicant, submits that the applicant has been convicted of the offence and severely sentenced without any legally acceptable evidence and based on mere suspicion and conjecture completely overlooking the cross-examination parts of the prosecution witnesses. Mr. Mahmud vehemently submits that the falsity of the allegation is ascertainable from the evidence of P.W. 1, the victim woman, who admittedly did not state most material facts before the investigating officer and the incident was reported to the police

after 2 days of the alleged occurrence without satisfactory explanation as well as that she moved voluntarily with the applicant together before the occurrence indicating her suspicious conduct. Even the medical report, dated 30.01.2018, did not reveal any injury mark on the victim's body. Therefore, Mr. Mahmud submits that the applicant has a fair chance of acquittal on the connected appeal and as such, till the appeal is disposed of, the sentence passed against the applicant may be suspended and he may be released on bail.

8. *Per contra*, Ms. S. Jahan, learned Additional Public Prosecutor, referring to the grounds cited in the objection petition, submits that the evidence of P.W. 1, the victim woman, reveals that the applicant is known to her from earlier as both of them deals in fish and on the relevant day, she was forced to have food in a restaurant and thereafter, she felt dizzy. After she felt dizzy, the accused applicant forcibly took her to a room of the restaurant, where he committed rape. Ms. Jahan further submits that her evidence further reveals that the accused applicant, thereafter, brought her back to the market on his motorcycle and left at the market. As these facts have also come in her statement under Section 164 Cr.P.C., the bail application of the applicant may not be considered favourably suspending the sentence.

9. Mr. J. Banerjee, learned counsel for the respondent No. 2 supported the submission made by the learned Addl. Public Prosecutor.

10. We have considered the above submissions of the learned counsel of both sides and the reasons recorded by the learned trial Court in the impugned judgment as well as the evidence on record.

11. It is noticed that the victim woman (P.W.1) is married and both she and the accused applicant are fish vendors and as such, they are known to each other. On the other hand, the evidence prima facie show that the alleged occurrence had continued from the market place to a restaurant and then she came back along with

the accused applicant, on motorcycle to the market. The alleged incident took place on 21.01.2018 and the victim's husband reported the occurrence at Amguri P.S. on 23.01.2018 by her husband although the incident was reported to him immediately. Therefore, apart from what has come in the rival submissions of both sides without going deep into the merit of the evidence available on record, we are of the opinion that subject to appreciation of evidence in detail during hearing of the connected appeal, the sentence passed against the accused applicant may be suspended and he can be released on bail till the appeal is disposed of.

12. In the premises, the sentence passed against the accused applicant vide the impugned Judgment and Order, dated 14.09.2022 is hereby suspended till disposal of Criminal Appeal No. 261/2022 and the accused applicant is directed to be released on bail of **Rs.50,000/- (Rupees Fifty Thousand)** with **two sureties** of like amount to the satisfaction of the **learned Sessions Judge, Bongaigaon.**

With the above direction, the Interlocutory Application stands disposed of.

JUDGE

JUDGE

Anupam

Comparing Assistant