

GAHC010214282022



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

Case No. : I.A.(Crl.) 658/2022
in Crl.A. 275/2022

NURAL ISLAM @ NURUL ISLAM.
S/O REZZAK ALI @ REZZAK SK
R/O BHOWLAGURI P.S.- BONGAIGAON
DIST.- BONGAIGAON ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P.

2:ANOWAR ALI SHEIKH
S/O LT. MAMUD ALI SHEIKH
VILL-BHOWLAGURI
P.O- NEW BONGAIGAON
P.S-BONGAIGAON DIDT-BONGAIGAON
ASSAM PIN-783381

Advocate for : MR. N UDDIN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

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

ORDER

Date : 13.12.2023
(M. Zothankhuma, J.)

Heard Mr. N. Uddin, learned counsel for the applicant and Ms. B. Bhuyan,
learned Addl. Public Prosecutor, Assam.

This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspending the sentence to be undergone by the applicant in view of being convicted by the learned Special Judge, Bongaigaon, in Special (P) Case No. 26 (Bgn)/2020, vide judgment dated 08.09.2022, by which the applicant was convicted under Section 376(3) of the IPC read with Section 4 of the POCSO Act. The applicant was, thereafter, sentenced to undergo rigorous imprisonment for 22 years with a fine of Rs. 50,000/- under Section 376(3) of the IPC in view of Section 42 of the POCSO Act.

The applicant's counsel submits that the age of the victim girl, as per the doctor's report and evidence (PW6), was between 15 to 17 years. He submits that the prosecution failed to prove the exact age of the victim at the time of the alleged incident, as the birth certificate of the victim girl was not available on record. However, the learned Trial Court erroneously held that the age of the victim to be below 16 years only on the basis of the school certificate. He submits that PW6 did not find any injury on the person of the victim and in view of the victim being between 15 to 17 years, there is no concrete proof that the girl was below 16 years at the time of the incident, two years on either side of the age range would have to be given. Learned counsel for the applicant, thus, prays that the sentence should be suspended and the applicant should be released on bail.

Ms. B. Bhuyan, learned Addl. P.P., on the other hand, submits that the evidence of PW1 clearly states that she was raped by the applicant. She also submits that the doctor (PW6), in his evidence, has clearly stated that the hymen of the victim was absent. Besides, PW4, who is the grandmother of the victim, saw the applicant fleeing from the bathroom, in which she had seen the naked victim. She also submits that the school certificate of the victim girl was exhibited, showing her date of birth as 16.07.2008.

We have heard the learned counsels for the parties. As can be seen from the

submission made by the learned counsel for the applicant, the basic stand of the applicant is with regard to whether the victim was below 16 years at the time of the incident.

On consideration of the documents, which had been considered by the learned Trial Court and keeping in view the evidence of PW1, PW4 and PW6, which corroborate each other, we are not inclined to allow the present application. Accordingly, the application for suspension of the sentence and bail is rejected. Any observation made in this order shall not be construed to be the final observation or finding of this Court, while deciding the main appeal.

The I.A. is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant