

GAHC010227202021



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

Case No. : I.A.(Crl.)/656/2022

DEBA KANTA RABHA
S/O LATE MONESWAR RABHA, R/O VILL. BORGAON, BHALAPARA, P.S.-
BOKO, DIST.- KAMRUP, ASSAM

VERSUS

THE STATE OF ASAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:JAYANTA RABHA
S/O LATE GOURI RABHA R/O VILL- BORGAON
BHALAPARA P.S- BOKO
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR. M K DAS

Advocate for the Respondent : PP, ASSAM

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

ORDER

22.02.2023

(M. Zothankhuma, J)

1. Heard Mr. M.K. Das, learned counsel for the applicant. Also heard Ms. B.

Bhuyan, learned Additional Public Prosecutor.

2. This is an application under Section 389(2) Cr.P.C. for suspension of the sentence and for releasing the applicant on bail. The applicant has been convicted, vide judgment and order dated 05.02.2020 passed by the Special Judge, Kamrup, Amingaon in Special Sessions (POCSO) Case No.25/2016, under Section 376 IPC read with Section 6 of the POCSO Act, 2012. He has been sentenced to undergo rigorous imprisonment for 12 (twelve) years with a fine of Rs10,000/-, in default simple imprisonment for 6 (six) months under Section 6 of the POCSO Act, 2012.

3. The applicant's counsel submits that the applicant did not commit any sexual offence upon the prosecutrix and that there is no proof with regard to the child born to the prosecutrix, being the child of the applicant. He also submits that there is nothing in the evidence to show the exact date of the occurrence of the offence. Further, there is a delay of 8 (eight) months in filing the FIR. He further submits that it is unbelievable that the parents of the prosecutrix would come to know of the pregnancy of their child only after eight months of her being pregnant, as her menstruation would have stopped at the time she conceived the child. He accordingly prays that the application should be allowed.

4. Ms. B. Bhuyan, learned Additional Public Prosecutor, on the other hand submits that the evidence of the prosecutrix clearly proves that the crime had been committed by the applicant. She also submits that independent witnesses

have taken the stand that the applicant had admitted that he had raped the victim girl. She accordingly submits that the application should be rejected.

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

6. The evidence recorded by the learned Trial Court shows that the prosecutrix has named the applicant in relation to the crime in question. Further, PW-4 in her evidence has also stated that the applicant admitted that he had raped the victim girl. The fact that the prosecutrix was below 16 years and the fact that she had given birth to a child clearly proves that an offence in violation of the POCSO Act had taken place.

7. On considering the gravity of the offence and the fact that Prosecutrix has named the applicant as the perpetrator of the crime, besides the evidence of PW-4, we are not inclined to suspend the sentence at this stage. The application is accordingly rejected. Any observation made in this order should not be considered to be on the merits of the appellant's case at the time of hearing of the appeal.

8. Interlocutory Application is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant