

GAHC010245592022



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

Case No. : I.A.(CrI.)/790/2022

GAURI SANKAR BARUAH
S/O LATE RUPESWAR BARUAH, RESIDENT OF MAGARAHAT CHANGMAI
GAON, PS AND DIST SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SMTI RUNU MUNDA
W/O SRI SENIRAM MUNDA
RESIDENT OF VILLAGE GELAKAY TAL MORAN GAON
PO AND PS GELAKAY
DIST SIVASAGAR
ASSAM 78569

Advocate for the Petitioner : MR B BURAGOHAIN

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./333/2022

GAURI SANKAR BARUAH
S/O LATE RUPESWAR BARUAH

RESIDENT OF MAGARAHAT CHANGMAI GAON
PS AND DIST SIVASAGAR
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PP ASSAM

2:SMTI RUNU MUNDA
W/O SRI SENIRAM MUNDA

RESIDENT OF VILLAGE GELAKAY TAL MORAN GAON
PO AND PS GELAKAY
DIST SIVASAGAR
ASSAM 785696

Advocate for : MR B BURAGOHAIN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 24.05.2023

Heard Mr. B. Buragohain, learned counsel for the applicant/appellant and Mr. P. Barthakur, learned Additional Public Prosecutor for the State of Assam.

2. This interlocutory application under Section 389 of the Code of Criminal Procedure, 1973, is filed for suspension of sentence and grant of bail to the applicant/appellant, namely, Gauri Sankar Boruah, who has been convicted by the learned Additional Sessions Judge-cum-Special Judge(POCSO), Sivasagar, in Special(POCSO) Case No. 30/2022, vide Judgment and Order dated 29.09.2022, and sentenced to undergo rigorous imprisonment for 4 (four) years with a fine of Rs.5,000/-, in default, rigorous imprisonment for 3(three) months, for the offence under Section 8 of POCSO Act. The applicant/appellant was also convicted under Section 448 IPC and sentenced to undergo rigorous imprisonment for 3(three) months and both the sentences are directed to run concurrently.

3. It is submitted by the learned counsel for the applicant/appellant that he has been detained in custody since the date of delivery of judgment. The allegation against the

applicant/appellant is that he unauthorizedly entered into the house of the informant and at that time none was present and taking advantage of that, he committed the offence as alleged in the FIR. Subsequently, a case was registered being Gelakey P.S. Case No. 19/2022 under Sections 448/354A IPC r/w 8 of POCSO Act. However, as a result of which, he has been convicted. It is also submitted that the learned court passed the impugned judgment on the basis of presumptions and assumptions, therefore, requires interference by this Court. In fact, the applicant/appellant did not commit any offence and there is every possibility of his acquittal. Therefore, the applicant/appellant may be enlarged on bail during pendency of the appeal.

4. On the other hand, Mr. Barthakur, learned Additional Public Prosecutor has raised no objection to the prayer of the applicant/accused, for releasing him on bail during the pendency of the appeal.

5. Considering the submissions made by the learned counsel for the parties as well as the documents annexed with the application, the accused/applicant, namely, Gauri Sankar Boruah is granted bail. Accordingly, he shall be released on bail in connection with Special(POCSO) Case No. 30/2022, on furnishing bail bonds of Rs. 30,000/- (Rupees Thirty Thousand Only) with two suitable sureties of the like amount, to the satisfaction of the learned Additional Sessions Judge-cum-Special Judge(POCSO), Sivasagar, on conditions to be imposed by the learned Court below.

6. The impugned judgment and order(s) are also stayed until disposal of the connected appeal.

7. This interlocutory application stands disposed of accordingly.

8. The connected appeal be listed in due course.

JUDGE

Comparing Assistant