

GAHC010255452023



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

Case No. : CrI.A./411/2023

ANIL RAJBONGSHI
S/O LATE HYRAM RAJBONGSHI

R/O RANGMATI
MOHILAPARA
P.S.- PALASHBARI
DIST.- KAMRUP
ASSAM.

VERSUS

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

2:NIZARA KALITA NATH
W/O PABITRA NATH

R/O POLICE STATION QUARTER COMPLEX
P.S.- PALASHBARI
P.O.- MIRZA
DIST.- KAMRUP
ASSAM.

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

Linked Case : I.A.(CrI.)/1091/2023

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S/O LATE HYRAM RAJBONGSHI
R/O RANGMATI
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P.S.- PALASHBARI
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BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 04.12.2023

Heard Mr. B.K. Bhagawati, learned counsel for the applicant and Mr. K.K. Das, 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, namely, Anil Rajbongshi, who has been convicted by the learned Special Judge, Kamrup, Amingaon, in Special(P) Case No. 73/2021, vide Judgment and Order dated

25.10.2023 and sentenced to undergo simple imprisonment for 3(three) years and fine of Rs.20,000/- i/d of payment of fine, simple imprisonment for 2(two) months for committing offence under Section 8 POCSO Act and simple imprisonment for 2(two) years and fine of Rs.10,000/-, i/d of payment of fine, simple imprisonment for 2(two) months for committing offence under Section 354/34 IPC and also awarded a fine of Rs.1,000/-, i/d of payment of fine, simple imprisonment for 5(five) days for committing offence under Section 448 IPC.

3. The learned counsel for the applicant has pointed out that in page No. 2 of the judgment, it is reflected that the applicant was convicted and sentenced to undergo simple imprisonment for 2(two) years and pay a fine of Rs.10,000/- under Section 8 of POCSO Act but in operative part of the judgment, the applicant was sentenced to undergo simple imprisonment for 3(three) years and fine of Rs. 20,000/-. It is also submitted that along with the appeal, the applicant/appellant has filed the present petition, seeking suspension of sentence by stating that the applicant/appellant has been falsely implicated in the case and there is every likelihood of the applicant/ appellant to succeed in the appeal and there is every possibility of the applicant/appellant to be acquitted in this case.

4. Learned counsel for the applicant/appellant next, has submitted that the learned trial court did not appreciate the evidence and materials available on record as such, the judgment is liable to be set aside. It is further submitted that the statement of the P.W. 1 is very much contradictory. It is also contended that there are lots of infirmities in the impugned judgment and the applicant/appellant has good case on merit in succeeding the appeal.

5. Per contra, the learned Additional Public Prosecutor has admitted that there are some anomalies found in the judgment of the learned trial court and he has no objection if the prayer of the applicant is allowed.

6. I have considered the submissions of learned counsel for the parties.

7. Considering the submissions of learned counsel for the parties as well as the period of sentence, the prayer of the applicant/appellant is allowed. The sentence imposed on the applicant/appellant in Spl. (P) Case No. 73/2021, against the applicant/appellant by the learned Special Judge (POCSO), Kamrup, Amingaon, vide order dated 25.10.2023 is suspended, subject to the following conditions:-

- a) The applicant/appellant is directed to be released on bail on his furnishing a bond of Rs. 50,000/- (Rupees Fifty Thousand) only, with one surety of the like amount to the satisfaction of the learned Special Judge (POCSO), Kamrup, Amingaon.
- b) The applicant/appellant shall not indulge in any criminal activities during the period of suspension of sentence.
- c) The applicant/appellant shall not leave the jurisdiction of the concerned Court.
- d) It is made clear that this Court has not delved into the merits of the appeal.

8. With the aforesaid observations, this Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant