

GAHC010256022022



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

Case No. : I.A.(CrI.)/801/2022

BISHUDIM KISKU
S/O- SRI SRIMAT KISKU, VILL.- KEMBOLPUR JLY. E.M. POLICE STATION
GOSSAIGAON, PIN- 783360, DIST.- KOKRAJHAR, ASSAM.

VERSUS

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

2:RUBIN TUDU

S/O- LATE SUTAR TUDU
VILL.- CHANDRAPUR
P.S. GOSSIGAON
PIN- 783360
DIST.- KOKRAJHAR
ASSAM

Advocate for the Petitioner : MR. A LAL

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./81/2021

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S/O- SRI SRIMAT KISKU
VILL.- KEMBOLPUR JLY. E.M. POLICE STATION GOSSAIGAON
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Advocate for : MR. A LAL
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.05.2023

Heard Mr. A. Lal, learned counsel for the appellant/ applicant. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent No. 1 and Mr. A.T. Sarkar, learned counsel for the respondent No. 2.

By this Interlocutory Application under Section 389 Cr.P.C. the appellant/applicant has prayed for stay of the operation of the judgment and sentence, dated 22.01.2021, passed by the learned Special Judge, Kokrajhar in Special Case No. 20/2017 as well as to allow him to go on bail.

The trial Court record is received in connection with Crl. Appeal No. 81 of 2021.

It may be mentioned that vide the impugned Judgment, dated 22.01.2021 the appellant/applicant has been convicted and sentenced to undergo R.I. for 10(ten) years and payment of fine of Rs.1,00,000/-, in default, to undergo further imprisonment of 2 years under Section 4 of the POCSO Act.

The prosecution story in brief is that on 02.09.2016, the father of the victim lodged an FIR at Grahampur Police Outpost alleging that his daughter/the victim had reported him that while she was studying in JLY EM School, the accused appellant/applicant, who was the Principal of said school, committed rape on her and also threatened her not to disclose the matter to anyone.

Mr. A. Lal, learned counsel appearing for the appellant/applicant, submits that the applicant has been convicted and sentenced by the learned trial Court based on wrong appreciation of evidence on record inasmuch as there is vital contradictions between the evidence of allegedly two victim minor girls and there was delay of 75 days in filing the F.I.R. without any explanation as well as the medical evidence also does not support the prosecution case. Mr. Lal further submits that the applicant was earlier released on bail during trial of the case, but he never misused it.

Opposing the application, Mr. B. Sarma, learned Addl. Public Prosecutor has drawn attention to the objection petition filed by the State and submits that in view of the well reasoned judgment rendered by the learned trial Court, the sentence awarded may not be suspended and the applicant's prayer for bail may not be considered favourably.

Mr. A.T. Sarkar, learned counsel appearing for the respondent No. 2 has opposed the application and agrees with the submission made by the learned Additional Public Prosecutor.

I have considered the submissions made by the learned counsel for the parties and also meticulously appreciated the evidence and materials brought on record.

A perusal of the case record, it is revealed that one of the victim minor girls was examined as P.W. 1 and the other one was examined as D.W. 1. P.W. 1 implicated the appellant/applicant, who was their teacher while D.W. 1 contradicted deposing that "It is also a false evidence by Ms. X (name withheld) that the accused committed rape on me. Ms. X did not inform me about any misbehavior by the accused." I have also perused the grounds of appeal and do find that there is some merit for adjudication subject to a detailed scrutiny of evidence on record. There is, of course, a legal question as to whether a prosecution witness can be called and examined as a defence evidence.

For the above stated reasons, it is provided that the operation of the sentence passed in the impugned judgment and sentence, dated 22.01.2021, passed by the learned Special Judge, Kokrajhar in Special Case No. 20/2017 shall remain stayed till disposal of the connected Criminal Appeal No.81/2021. The applicant/accused 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 **Special Judge (POCSO), Kokrajhar.**

The Interlocutory Application stands disposed off.

JUDGE

Comparing Assistant