

GAHC010265142022



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

Case No. : I.A.(Crl.)/19/2023

DIGANTA DAS
S/O SRI DHARESWAR DAS, RESIDENT OF VILLAGE BIHDIA, PS NALBARI,
PO KARIA, 781339, DIST NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:SMTI PRIYANKA DAS
(VICTIM)
D/O SRI PRAHLAD DAS

RESIDENT OF VILLAGE NALBAI PS NALBARI
PO KARIA
781339
DIST NALBARI
ASSA

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

15.02.2023

(Michael Zothankhuma, J)

Heard Mr. M. Pathak, the learned counsel appearing for the applicant. Also heard Ms. S. Jahan, the learned Addl. Public Prosecutor, Assam representing the State.

This application has been made for suspending the sentence awarded to the applicant under Section 6 of the POCSO Act, by which the applicant is to undergo S.I. for a period of 20 years with fine of Rs.30,000/-, in default, S.I. for six months.

The applicant's counsel submits that the school certificate submitted by the prosecution to prove that the age of the victim was around 14 years cannot be admissible in evidence, inasmuch as, the maker of the said document i.e. the Principal of the school has not given evidence proving the said age certificate of the victim. The counsel for the applicant also submits that in the statement given by the victim under Section 164 of the CrPC, she had clearly admitted to the fact that she and the applicant were in a love relationship and that the victim

became pregnant because of the relationship. He also submits that the applicant is still willing to marry the victim girl. He accordingly prays that the sentence should be suspended and the applicant be granted bail.

Ms. S. Jahan, the learned Addl. Public Prosecutor, on the other hand, submits that besides the certificate issued by the Headmaster of Bihdia Adarsha L.P. School, showing the age of the victim as 14 years at the time of incident, the evidence of the doctor was to the effect that the victim was between 14 and 16 years of age at the time of incident. Thus, there could not have been any consensual sex under the POCSO Act, 2012 for a minor. She also submits that though the applicant's counsel has stated that the applicant was willing to marry the victim, the fact remains that the applicant refused to marry the victim girl after the FIR was filed and when he was called by the family of the victim. She, accordingly, submits that the application should be rejected.

On hearing the learned counsels for the parties, we find that the question of whether the age certificate issued by the Headmaster of the school would be in-admissible as evidence, can be decided at the time of hearing of the appeal. However, as on date, the age of the victim as has been accepted in terms of the school certificate, will have to hold the field. The applicant and the victim may have been in a love relationship and a child borne out of the said relationship. However, though the relationship may have been consensual between the applicant and the victim, it has to be kept in mind that a child is incapable of giving consent, when she is underage and a minor.

On considering the submission of the learned counsels for the parties,

we are of the view that the application for suspension of the sentence and grant of bail cannot be allowed at this stage. The application is accordingly rejected.

The observation made in our order should not be taken as a finding made on the merits of the case at the time of hearing of the appeal.

The Interlocutory Application is disposed of accordingly.

JUDGE

JUDGE

Comparing Assistant