

GAHC040012312024



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

Case No. : Crl.Rev.P./16/2024

Balu Makang
Son of Late Tagi Mokang, resident of Town Baptist Church Colony
Seppa, PO and PS Seppa, East Kameng District, Arunachal Pradesh.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Taba Topu, Tem Pahi, Tokdak Tamin, L Kagung

Advocate for the Respondent : P P of AP,

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 18.09.2024

Heard Mr. T. Topu, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent.

2. By this revision petition, the petitioner has challenged the order dated 23.08.2024 and 09.09.2024, passed during the proceedings in the POCSO (C) No. 04/2023 in Seppa WPS Case No. 02/2023 under Section 376(2)(f)(j)(n) of IPC read with Section 6 of POCSO Act, by the Special Judge POCSO, West Kameng, East Kameng, Tawang Districts, Arunachal Pradesh.

3. It is the case of the petitioner that on 23.08.2024, when the matter was taken up by the learned Special Judge POCSO, the learned Counsel for the accused/petitioner could not appear before the Court due to his illness. However, his junior learned counsel Mr. L. Tsering (Jr.) prayed for adjournment of the matter for filing an application under Section 315 of Cr.P.C to allow the accused person to adduce evidence. Thereafter, another application was prepared for filing of the list of defense witnesses on behalf of the accused.

4. Mr. T. Topu, learned counsel for the petitioner, submits that despite the prayer of the learned Junior counsel appearing for the accused/petitioner and the prayer for allowing them to adduce evidence in the defense of accused

person, the learned Special Judge POCSO, passed the order dated 23.08.2024 fixing the case for final argument on 09.09.2024. Thereafter, on 09.09.2024, without allowing the learned counsel for the accused/petitioner to file application and submit list of defense witnesses, fixed the matter for judgment on 19.09.2024. Therefore, Mr. T. Topu, learned counsel submits that, the learned Special Judge POCSO, has deprived the accused of his right to adduce evidence of defense. As such, the learned Special Judge POSCO, Bomdila, may be directed to allow the accused/petitioner to adduce evidence and defense witnesses.

5. Having consider the submission of the learned counsel for the petitioner and not being opposed by Mr. T. Ete, learned Additional Public Prosecutor, I deem it appropriate to allow the learned counsel appearing on behalf of the accused/petitioner to file an appropriate application along with list of witnesses for consideration by the learned Special Judge POCSO, Bomdila.

6. Accordingly, the accused/petitioner is directed to file an appropriate application within 4(four) days from today seeking to allow him to adduce evidence and witnesses, if any, in his defense. On filing of such application by the accused/petitioner, the learned Special Judge POCSO, Bomdila, shall consider and dispose of the same in accordance with law.

7. It is needless to observed that if the accused is not allowed to adduce evidence and the witnesses, it would be against principle of a fair trial.

8. In view of the order passed above, the order dated 09.09.2024, shall remain suspended till the application, which is directed hereinabove, is considered and disposed of

9. Accordingly, this criminal revision petition stands allowed and disposed of.

JUDGE

Comparing Assistant