

GAHC040017132024



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

Case No. : IA(Crl)/107/2024

Pitam Lamnio
Son of Shri Dapung Lamnio, resident of village Lamnio, PO Khenawa, PS Seppa,
East Kameng District, Arunachal Pradesh.

VERSUS

The State of AP and Anr
represented by the PP of AP 2:XXX
Age: 0
Occupation :
Daughter of Shri Komar Rimo
resident of Jayanti
PO and PS Seppa
East Kameng District
Arunachal Pradesh

Advocate for the Petitioner : Sonam Tsomo,

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

11.12.2024

(Robin Phukan, J.)

Heard Mr. S. Mow, learned counsel for the applicant; Mr. T. Ete, learned

Additional Public Prosecutor of Arunachal Pradesh for the opposite party No. 1; and Mr. R.L. Thungon, learned counsel for the opposite party No. 2.

2. This interlocutory application is preferred by the applicant for determination of the age of the victim girl/respondent No. 2, under Sections 94 & 9(2) of the Juvenile Justice (Care and Protection of Children) Act, read with Section 54(18)(iv) of the Juvenile Justice Rules and 34 of the POCSO Act.

3. The record reveals that the applicant stood convicted by the learned Special Judge (POCSO), Bomdila, vide impugned judgment and order dated 22.09.2022 and sentenced to suffer rigorous imprisonment for a period of twenty years.

4. The record also reveals that during the pendency of the trial, the applicant had filed a series of petitions before the learned trial court for determination of the age of the victim girl/respondent No. 2, under Sections 94 & 9(2) of the Juvenile Justice (Care and Protection of Children) Act, read with Section 54(18)(iv) of the Juvenile Justice Rules and Section 34 of the POCSO Act. But, the same had not been properly determined by the learned trial court.

4.1. Being aggrieved, the applicant had preferred one Criminal Revision Petition before this court, being Criminal Revision Petition No. 12/2023 and vide order dated 16.06.2023, this court was pleased to direct the learned Special Judge (POCSO), Bomdila to determine the age of the victim girl by following due procedure and proceed with the matter in accordance with law. Thereafter, the learned trial court, vide order dated 19.06.2023, had held that the age of the victim girl will be determined at the final hearing.

4.2. Being aggrieved, by the said order dated 19.06.2023, the applicant again approached this court by filing another Criminal Revision Petition, being Criminal Revision Petition No. 15/2023 and vide order dated 17.07.2023, this court

was pleased to direct the learned trial court to determine the age of the victim girl within a period of one month. Thereafter, vide order dated 05.09.2023, the learned trial court had determined the age of the victim girl.

4.3. Thereafter, being aggrieved, the applicant again preferred one Criminal Revision Petition before this court, being Criminal Revision Petition No. 24/2023, challenging the order dated 05.09.2023, passed by the learned trial court. But, vide order dated 20.09.2023, this court was pleased to dismiss the said revision petition.

4.4. Thereafter, the learned trial court, after hearing learned counsel for both the parties, convicted the present applicant and sentenced him as aforesaid.

4.5. Being aggrieved, the applicant has preferred an appeal, being Criminal Appeal No. 34(AP)/2023 and while the said appeal is pending for hearing, this interlocutory application is preferred.

5. As the matter has already been set at rest by this court, vide order dated 20.09.2023, in the Criminal Revision Petition No. 24/2023, we are of the considered view that this interlocutory application, on the same subject matter, is not maintainable and it is nothing, but an abuse of the process of the court.

6. At this stage, Mr. Mow, learned counsel for the applicant submits that he will not press this interlocutory application.

7. Accordingly, this interlocutory application stands closed on withdrawal. However, we deemed it appropriate to grant liberty to the applicant to raise the issue of age determination of the victim girl/respondent No. 2 at the time of final hearing of the appeal.

JUDGE

JUDGE

Comparing Assistant