

GAHC010022462023



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

Case No. : I.A.(Crl.)/86/2023

UTTAM BARMAN
S/O LATE KANAK CHNADRA BARMAN, R/O MAZGAON, MAZPARA UNDER
BONGAIGAON POLICE STATION IN THE DISTRICT OF BONGAIGAON,
ASSAM.

VERSUS

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

2: PURNIMA RAY
S/O MONORAM BARMAN

R/O MAZGAON
MAZPARA UNDER BONGAIGAON POLICE STATION IN THE DISTRICT OF
BONGAIGAON
ASSAM
PIN- 783380

Advocate for the Petitioner : MR. B M CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

15.05.2024

Heard Mr. B. M. Choudhury, learned counsel for the applicant. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

2. This application filed under Section 389 (2) of the Code of Criminal Procedure, 1973, praying for suspension of execution of sentence and stay of realization of fine and release of the accused/applicant on bail, as per the Judgment and Order dated 19.12.2022 passed by the learned Special Judge, Bongaigaon in Special (P) Case No.42 (BGN)/2021, whereby, convicted the accused/applicant under Section 10 of the Protection of Children from Sexual Offences (POCSO) Act, and sentenced him to undergo Rigorous Imprisonment for 5(five) years and to pay a fine of Rs.30,000/- (Rupees Thirty thousand) only and in default Simple Imprisonment for 1(one) month.

3. Mr. Choudhury, learned counsel for the applicant has submitted that there are valid grounds for interference of this Court against the said impugned Judgment and Order dated 19.12.2022. He also submits that the grounds taken in the memo of appeal are good grounds of appeal and there is every chance of acquittal in appeal. He further submitted that from the materials available in the case records and the evidence on record does not warrant conviction and sentence of the accused/applicant in anyway, but, even then, the accused/applicant has been convicted and sentenced by the Trial Court.

4. Mr. Choudhury, learned counsel for the applicant has submitted that on the day of the incident there was puja in the house of the accused/applicant and

from the evidence of the PW-1/respondent No.2 itself, it is seen that the accused/applicant was present in the puja, and the same has been corroborated by the PW-5. Further, the informant did not approach before the police at the initial stage and the FIR was lodged only when the son of the accused/applicant did not agree to the proposal of financial assistant to the informant. He further submitted that the accused/applicant is of 65 years of age and during the entire trial of the case, he never misused the liberty granted to him. More so, the accused/applicant was behind the bar for more than 2(two) years and thus, he is languishing in jail hazot for almost half of the sentence imposed on him. Being the local resident of the addressed locality there is no chance of absconding of the accused/petitioner and he will abide by all the terms and conditions imposed upon him, if the privilege of bail is granted.

5. In this context, Mr. Sharma, learned Additional Public Prosecutor has submitted that the statement of the minor victim is consistent and the accused/applicant also admits that he was present in the place of occurrence on the day of the incident. Further, the DW-1 who deposed in his cross examination admitted that the accused/applicant is his childhood friend and till date no case has been filed regarding the dispute between the accused/applicant and the complainant relating to land dispute. Accordingly, he submits that it is not a fit case to suspend the sentence imposed on the accused/applicant or to release him on bail during pendency of the present appeal.

6. Considering the submissions of learned counsels for both sides as well as considering the entire aspect of the case and also considering the length of detention already undergone by the applicant which is almost half of the sentence and further for the ends of justice, I find it appropriate to suspend the

further sentence and to allow the present applicant to remain on bail.

7. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, Bongaigaon, the applicant, namely, **Sri Uttam Barman**, be enlarged on bail and the sentence imposed on the accused/applicant vide Judgment and Order dated 19.12.2022 passed by the learned Special Judge, Bongaigaon in Special (P) Case No.42 (BGN)/2021 is hereby stands stayed/suspended till disposal of the connected appeal.

8. In terms of above, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant