

GAHC010032462024



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

Case No. : Crl.Pet./189/2024

JAHIRUL ISLAM
S/O SAIFUL ISLAM
R/O VILL- DIGHALI CHAPORI
P.S.JAMUGURI, DIST. SONITPUR, ASSAM

VERSUS

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

2:AINUL HOQUE
S/O MD. KARJAT ALI
R/O VILL- DIGHALI CHAPORI
P.S. JAMUGURI DIST. SONITPUR
ASSA

Advocate for the Petitioner : MR. K BORUAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 20.02.2024

Heard Mr. K. Boruah, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 2.

2. This is an application under Section 482 *read with* Section 401 of the Code of Criminal Proceeding, 1973 praying for setting aside and quashing the Order dated 05.02.2024, passed by the learned Special Judge, POCSO, Sonitpur, Tezpur, Assam in Special POCSO Case No. 18/2022, under Sections 376/511 of the Indian Penal Code *read with* Section 12 of the Protection of Children from Sexual Offences Act, 2012.

3. It is submitted by Mr. Boruah, learned counsel for the petitioner, that this is the second petition filed before this Court. Earlier, vide order dated 21.12.2023, passed in Criminal Petition No. 1388/2023, a co-ordinate Bench of this Court granted the prayer of the petitioner to adduce evidence fixing any convenient date of the Court in the month of January, 2024 and accordingly, the learned Court below fixed the date on 05.02.2024 and the accused/petitioner adduced the evidence of DW-1 and after completion of his evidence, the witness was also closed. But, while adducing the evidence of the DW-1, some new development, like role of the parents of the accused/petitioner, also revealed and hence, there was an oral prayer made by the learned engaged counsel for the petitioner to give one more chance to adduce the evidence of his parents. However, considering the observation made by this Court that "*no further*

indulgence should be granted to the present petitioner under any circumstance by the Trial Court”, the learned Court below rejected the prayer for adducing further evidence as prayed by the accused/petitioner. Further he submitted that earlier it was the prayer for adducing evidence of DW-1, who knew the facts of the case, but they came to know about the role of the parents only while adducing the evidence of DW-1 and if one more chance is not given to the present accused/petitioner prejudice would be caused to him and he will not be able to take his appropriate defence in this case and, accordingly, prayed for setting aside and quashing the impugned Order dated 05.02.2024, passed by the learned Special Judge, POCSO, Sonitpur, Tezpur, Assam in Special POCSO Case No. 18/2022, under Sections 376/511 of the Indian Penal Code *read with* Section 12 of the Protection of Children from Sexual Offences Act, 2012, giving one more opportunity to adduce evidence of the parents of the accused/petitioner.

4. In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that the learned Special Judge, POCSO did not commit any error or mistake while rejecting the prayer for adducing further evidence by the accused/petitioner and vide Order dated 21.12.2023, this Court directed the learned Court below not to give any further indulgence to the accused/petitioner in any circumstance of the case. Thus, considering the observation made by this Court, the learned Court below passed the order rejecting the prayer of the accused/petitioner to adduce further evidence. More so, this may be the delay tactics of the petitioner to delay the final disposal of the case pending before the learned Special Judge. Accordingly, the learned Additional Public Prosecutor has submitted that there is no reason to make any

interference in the order passed by the learned Court below.

5. After considering the submissions made by the learned counsels for both sides and considering the entire circumstances of this case, it is seen that the learned Special Judge, POCSO apparently made no error or mistake while rejecting the prayer for adducing further evidence by the accused/petitioner considering the observation made by this Court vide order dated 21.12.2023, passed in Criminal Petition No. 1388/2023. However, considering the role of the parents of the accused/ petitioner, which has come out only at the time of adducing evidence of the DW-1, I find that one more opportunity, which may also be considered as a last chance for the petitioner, be given to the accused/petitioner for the ends of justice. Accordingly, the learned Special Judge, POCSO, Sonitpur, Tezpur, Assam is hereby directed to fix a convenient date giving an opportunity to the petitioner to adduce the evidence of further DWs and that may be considered as a last opportunity/chance to the accused/petitioner to adduce evidence. The accused/petitioner is hereby directed to produce the witness on the date to be fixed by the learned Special Judge, POCSO, Sonitpur, Tezpur, Assam without fail and in default, the learned Special Judge, POCSO, Sonitpur, Tezpur, Assam will proceed with the case for argument.

6. With the above observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant