

GAHC010035362024



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

Case No. : I.A.(CrI.)/183/2024

ABU BAKKAR ALI @ MD. ABU BAKKAR SIDDIQUE
S/O LATE MOKSHED ALI,
R/O CHAMPUPARA, P.S.- CHHAYGAON, DIST.- KAMRUP (R), ASSAM.

VERSUS

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

2:MD. ROBIUL HUSSAIN

S/O LATE MOKIM ALI
R/O CHAMPUPARA
P.S.- CHHAYGAON
DIST.- KAMRUP (R)
ASSAM

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.05.2024

Heard Mr.K.Bhuyan, learned Counsel for the applicant/. Also heard Mr.

R.R.Kaushik, learned Addl.P.P. for the State opposite party No.1. None appears for the opposite party No.2.

By filing an application under Section 389 CrPC, the applicant/appellant has prayed for suspension of sentence during pendency of appeal and release him on bail in connection with Special POCSO Case No. 05/2015, whereby the applicant/ appellant was convicted under Section 8 of POCSO Act and sentenced to undergo rigorous imprisonment for five years and also to pay a fine of Rs.20,000/- passed by the learned Special Judge, POCSO, Kamrup, Amingaon.

Learned Counsel for the applicant has submitted that there are lots of contradictions in the statement of the victim when her statement was recorded under Section 161 CrPC and then under Section 164 CrPC and before the trial court.

It is further submitted by learned counsel for the applicant that the victim used the word 'pod' while her statement was recorded under Section 161 CrPC. But there is no such word like 'Pod' in Assamese dictionary. Hence, the applicant/ appellant cannot be convicted under Section 8 of the POCSO Act.

By referring the judgment of Hon'ble Surpeme Court vide *Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and anr.* reported in (2003) 3 SCC 175, learned counsel has pointed out that the Hon'ble Supreme Court has held that witness not stating a particular fact to the police in course of investigation and prosecution seeking to prove the said fact through that witness, the evidence of that witness regarding the said fact held to be of no significance.

According to learned counsel for the applicant, under the facts and circumstances of the case, there is every possibility of acquittal of the applicant/ appellant.

In response, learned Addl.P.P. submits that though the applicant was convicted under Section 8 of POCSO Act and his first application for bail was rejected by this court, hence, at this stage, learned Addl.P.P. has prayed for dismissal of the prayer of the applicant regarding suspension of sentence during appeal.

I have considered the respective submission made by the parties and perused the impugned judgment and order passed by the trial court. The maximum sentence of imprisonment awarded to the applicant is five years. Hon'ble Supreme Court in the case of *Bhagwan Rama Shinde Gosai –vs-State of Gujarat*, reported in (1999) 4 SCC 421, has held that when a person is convicted and sentenced to a short term imprisonment, normal rule is that when his appeal is pending, sentence should be suspended by enlarging the appellant on bail and rejection can only be by way of exception.

Having regard to the facts and circumstances of the case, keeping in mind the arguments put forward by the learned counsel for the applicant/ appellant, the probability factors of the evidence on record, term of imprisonment awarded, conduct of the applicant when on bail during the trial and the principles laid down by the Hon'ble Supreme Court in the case of *Bhagwan Rama Shinde Gosai (supra)*, this court is inclined to grant bail to the applicant by suspending the sentence during appeal. Accordingly, the applicant be released on furnishing bail bond of Rs.50,000/- with two sureties of the like amount to the satisfaction of learned Special Judge, POCSO, Kamrup, Aminggaon.

The interlocutory application stands disposed of.

JUDGE

Comparing Assistant