

GAHC010044332024



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

Case No. : I.A.(CrI.)/508/2024

RAM KUMAR CHAUHAN
S/O- SRI DEBANDAR CHAUHAN
R/O- SAMOGURI CHAUHAN BASTI
P.S.- HOWRAGHAT
DIST- KARBI ANGLONG
PIN- 782481
ASSAM.PHONE- 9864383578.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP
ASSAM.

2:SRI RAJESH CHOUHAN
S/O- LT. RAM AVTAR CHAUHAN
R/O- VILLAGE IKRANI BASTI
P.S.- BOKAJAN
DIST- KARBI ANGLONG
PIN- 782480
ASSAM.

Advocate for : MR. A BARUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

18.09.2024

(M. Zothankhuma, J)

1. Heard Mr. A. Baruah, learned counsel for the applicant/appellant and Ms. B. Bhuyan, learned Additional Public Prosecutor for the State. Mr. S.J. Sarma, learned counsel appears for the opposite party no.2.
2. The instant interlocutory application under Section 389 of the Code of Criminal Procedure, 1973 is preferred, seeking suspension of execution of the sentence passed against the applicant-appellant and for his release on bail. The applicant as the appellant has preferred the connected appeal against the Judgment and Order dated 19.12.2023 passed by the Court of Special Judge [POCSO], Karbi Anglong, Diphu in POCSO Case no. 19/2022. By the Judgment and Order dated 19.12.2023, the learned trial court has convicted the applicant/appellant for the offence under Section 6 of the POCSO Act and the applicant appellant has been sentenced to undergo rigorous imprisonment for 20 [twenty] years and to pay a fine of Rs. 10,000/- [Rupees ten thousand], in default of payment of fine, to undergo simple imprisonment for another 2 [two] months.
3. The applicant's counsel submits that the applicant and the victim girl got married on 15.03.2023 and have also been blessed with a child on 05.10.2022.
4. The counsel for the applicant submits that the age of the victim girl could not be ascertained at the time the incident occurred between the applicant and

the victim girl. The evidence given by PW-1, the father of the victim girl, shows that the Birth Certificate of his victim daughter was issued 10 (ten) years after her birth and the date of birth mentioned in the Birth Certificate was not the exact date of the birth of the victim, as it was made on assumption only. He also submits that at the time the applicant and the victim were in a love relationship, the applicant was not aware of the exact age of the victim though the applicant believed the victim girl to be a major.

5. Ms. B. Bhuyan, learned Additional Public Prosecutor submits that as per the cross-examination of the victim girl's father, there is no proof that the victim girl was above 18 years at the time when the applicant started having sexual relation with the victim girl.

6. Mr. S.J. Sarma, learned counsel for the respondent no.2 submits that the age of the victim girl at the time of incident is not proved and the victim girl could have been a major at the time of incident.

7. The Date of Birth Certificate of the victim girl which has been made on assumption, shows that the victim girl's date of birth was 13.07.2004. As the child was born on 05.10.2022, it can be assumed that sexual relationship started at the time when the victim was around 17 years 6 months. However, as stated earlier, the age written on the Date of Birth Certificate of the victim appears to be made on assumption.

8. On considering the submission made by the counsel for the parties and in view of the evidence given by the respondent no.2 in his cross-examination, this Court is of the view that the sentence imposed upon the applicant in pursuant to the Judgment and Order dated 19.12.2023 passed by the Court of Special

Judge [POCSO], Karbi Anglong, Diphu in POCSO Case no. 19/2022 should be kept suspended.

9. Accordingly, the applicant is allowed to go on bail, on furnishing a bail bond of Rs.20,000/- with one surety of like amount, to the satisfaction of the learned Trial Court.

10. I.A. is accordingly allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant