

GAHC010052462024



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

Case No. : I.A.(CrI.)/252/2024

BIKASH PHUKAN
S/O SRI AJIT PHUKAN, R/O BOROHA, P.S.- SAPEKHATI, DIST.- CHARAIDEO,
ASSAM.

VERSUS

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

2:KANAKLATA BURAGOHAIN
W/O SRI PRODIP BURAGOHAIN

VILL.- BALIKHETIA GAON
P.S.- SEPEKHATI
DIST.- CHARAIDEO
ASSAM
PIN- 785692

Advocate for the Petitioner : MR. B BARUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.04.2024

1. Heard Mr. B. Baruah, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

2. This application under Section 389 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Bikash Phukan* praying for suspension of sentence imposed on him by the judgment and order dated 23.11.2023 passed by the learned Sessions Judge, Charaideo, whereby he was convicted under Section 4 of the POCSO Act, 2012, and was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/- and in default of payment of fine to undergo simple imprisonment for another one month.

3. The aforesaid judgment and order has been impugned by the present applicant by filing a connected criminal appeal which has been registered as Criminal Appeal No. 482/2023.

4. The learned counsel for the applicant has submitted that the present applicant has been sentenced for a period of seven years only and the trial court while coming to the finding of guilt of the present applicant has not taken into consideration that the age of the victim was not assessed as per the provision of Rule 12 of the Juvenile of Justice (Care and Protection of Children) Rules, 2007, which was to be followed in the determination of age of a minor and in support of the submission, he has cited a ruling of the Apex Court in the case of “**Jarnail Singh –Vs- State of Haryana**” reported in “**(2013) 7 SCC 263**”.

5. The learned counsel for the applicant has also submitted that the trial court has relied on the opinion of the doctor, who examined the victim in coming to the finding that the age of the victim is less than 18 years. However, it failed to give the benefit of margin of two years, which should have been given to the present applicant as per the observation of the Apex Court in the case “**Jaya Mala –Vs- Home Secretary, Government of Jammu and Kashmir and Ors.**”, reported in “**(1982) 2 SCC 538**”.

6. The learned counsel for the applicant has also submitted that the victim girl in her testimony has deposed that the relationship between her and the present applicant was consensual in nature and the trial court has convicted the present applicant under POCSO Act only because her age was found to be less than 18 years. It is also submitted by the learned counsel for the applicant that presently the applicant is undergoing treatment for cannabis induced psychosis as he was addicted to taking cannabis earlier and after undergoing treatment he is detained in jail. He has also submitted that considering the submissions made by him, the applicant has an arguable case and there is every possibility of his getting an order of acquitted in the connected Criminal Appeal No. 482/2023, and therefore, he has prayed for suspending the sentence imposed on the applicant during the pendency of the connected appeal.

7. I have considered the submissions made by the learned counsel for both the sides.

8. It appears from the record that the submissions made by the learned counsel for the applicant makes out an arguable case in favour of the applicant and it also appears that the victim girl has deposed during the trial that the relationship between her and the applicant was consensual. As the applicant has been suffering from psychosis, *prima facie*, he appears to have an arguable case in the connected criminal appeal and as he has been sentenced for a limited period of seven years only, this court is of considered opinion that unless the sentence imposed on the present applicant is suspended during the pendency of the connected criminal appeal, he would be highly prejudiced if ultimately the connected criminal appeal is decided in his favour.

9. In view of above, the sentence imposed on the present applicant is hereby suspended during the pendency of the connected criminal appeal, and

the applicant is allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) with one surety of like amount subject to the satisfaction of the learned Special Judge, Charaideo with following condition:-

- (i) That he shall surrender before the court of learned Special Judge, if ultimately his connected appeal fails;
- (ii) That he shall not indulge in any similar offence for which he has been convicted in the instant case.

10. With the above observation, this interlocutory application is hereby disposed of.

JUDGE

Comparing Assistant