

GAHC010070512023



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

Case No. : I.A.(Crl.)/275/2023

SANTANU GOSWAMI
S/O LATE TARUN GOSWAMI
R/O HOUSE NO. 08
ANANDA RAM BARUAH BYE LANE
SEWALI PATH
P.S.- HATIGAON
GUWAHATI-781038 IN THE DISTRICT OF KAMRUP (M)
ASSAM.

VERSUS

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

2:RAGHU NANDA DEKA
S/O BINA RAM DEKA

PERMANENT RESIDENT OF MUKUNDAPUR
KARIPARA CHOWK
GORESWAR
P.O.- BHOKPUR
P.S.- GORESWAR
DIST.- BAKSA (BTAD) AND PRESENTLY RESIDING AT HOUSE NO. 51
ULUBARI
KACHARI BASTI
P.S.- PALTAN BAZAR
DIST.- KAMRUP (M)
PIN- 781007.

Advocate for : MR P KATAKI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

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

27.02.2024

Heard Mr. P. Kataki, learned counsel for the applicant. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No.1.

No one represented on behalf of the respondent No.2 though the name of three counsels has been reflected in the cause list.

This is an application filed under Section 389 (2) of the Code of Criminal Procedure, 1973, praying for suspension of sentence and realization of fine challenging the judgment and order dated 21.03.2023 passed by the learned Special Judge, POCSO in Kamrup (M), Guwahati in Session Case No.949/2019 by convicting the applicant under Section 354 of IPC *read with* Section 10 of the POCSO Act, 2012 and sentencing him to undergo R.I. for 5 (five) years and to pay a fine of Rs.10,000/- (Rupees ten thousand) only in default of payment of fine he shall undergo S.I. for 6 (six) months for the offence committed under Section 10 of the POCSO Act. Further he has been sentenced to undergo R.I. for 3(three) years and fine of Rs.5000/-(Rupees five thousand) only in default of payment he shall undergo S.I. for 3(three) months for offence committed under Section 354 of IPC. And both the sentences run concurrently.

Mr. P. Kataki, learned counsel for the applicant has submitted that the judgment and order passed by the learned Special Judge, POCSO is bad in law. It has been stated in paragraph No.37 of the said judgment that both the accused and defence side had adduced their evidences as DWs, wherein, the defence witnesses DWs 3 & 4 has stated that during the class hour of the victim girl, both of them along with the wife of the accused/applicant

were sitting next room watching the class of the victim and waiting for next class and during that hour nothing had happened. But, even after said observation the conviction order was passed only on the basis of presumption under Section 29 of the POCSO Act and the Trial Court did not consider the evidences, produced by the DWs of the defence side. Thus, on the basis of this sole ground also, the present applicant had good case for succeeding the present connected criminal appeal and accordingly, he prays to suspend the conviction and allow the accused/applicant to remain on bail till disposal of the connected appeal. He further submits that there is no chance of absconding, if the same is allowed.

In this regard, Mr. Borthakur, learned Additional Public Prosecutor has submitted that the statement of the victim has been recorded under Sections 161 and 164 of Cr.P.C. and there is no reason of disbelieving victim and the facts as alleged in the FIR. However, the accused/applicant is behind the bar since last 11 months and the term of term of conviction is of 5 years, thus, he raised no objection on the prayer made by the learned counsel for the applicant.

Considering the submissions made by the learned counsels of both sides and considering the fact that the learned Special Judge, POCSO has taken presumption under Section 29 of POCSO, Act. It is seen that that the accused/applicant had produced 4 Nos. of witnesses to discharge his burden and to prove his innocence but the Court has not considered the all the DWs at the time of passing the judgment and order dated 21.03.2023, thus, I find it a fit case to allow the applicant to go on bail by suspending the sentence imposed upon him vide judgment and order dated 21.03.2023.

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, POCSO in Kamrup (M), Guwahati, the accused/applicant, namely Santanu Goswami, be enlarged on bail, subject to the following conditions:

- (i) that the applicant shall not leave the jurisdiction of the learned Special Judge, POCSO in Kamrup (M), Guwahati without prior permission.

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

JUDGE

Comparing Assistant