

GAHC010103602024



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

Case No. : I.A.(CrI.)/542/2024

SANAJUL HAQUE LASKAR
S/O LATE AMINUR RAHMAN LASKAR, R/O PAN GRAM, P.S.- UDHARBOND,
DIST.- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE P.P., ASSAM.

2:SANTI AKURA
W/O BULU AKURA

VILL.- CHANDIGHAT T.E.
P.S.- UDHARBOND
DIST.- CACHAR
ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA, MS S R MAZARBHUIYA, S. M.
ZINNA, MS A BEGUM

Advocate for the Respondent : PP, ASSAM,

Linked Case : CrI.A./182/2024

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S/O LATE AMINUR RAHMAN LASKAR

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

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18/12/2024
Suman Shyam, J

Heard Mr. A. M. Barbhuiya, learned counsel for the applicant/appellant. We have also heard Ms. S. Jahan, learned APP, appearing for the State. Mrs. P.B. Bordoloi, learned Legal Aid Counsel is present in behalf of the informant/respondent no. 2.

By the judgement and order dated 02/05/2024 passed by the learned Special Judge (POCSO), Cachar, Silchar in Special (POCSO) Case No. 24/2016, the sole applicant/appellant herein was convicted under section 6 of the POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for 20 years and also to pay fine of Rs. 50,000/- with default stipulation for committing rape upon the victim girl. Since then, he is in jail.

The applicant as appellant has filed Criminal Appeal No. 182/2024 assailing the judgement and order dated 02/05/2024. The appeal is pending disposal before this Court.

The present IA has been filed under section 389 Cr.P.C. with a prayer to suspend the jail sentence of the appellant and for releasing him on bail.

On 15/08/2016, the mother of the victim had lodged an ejahar before the Officer-in-Charge, Udarbond Police Station stating that on 15/08/2016, when her daughter was returning from private tuition, at around 4-30 p.m., two unknown youths had forcefully taken her under a tree and by removing her clothes, had committed rape upon her. On receipt of the ejahar, Udarbond PS case No. 242/2016 was registered under section 6 of the POCSO Act, 2012. The victim was subjected to medical examination whereby, it was established that the victim had in fact suffered rape. Subsequently, the accused person was identified by the victim in a T.I.P. and thereafter, again in the dock during trial. Based on such TIP identification, the accused has been convicted.

By referring to the materials available on record, Mr. Barbhuiya submits that the entire prosecution case is based on TIP conducted by the Police in violation of the established norms thereof, inasmuch as, the victim had seen the accused in the Police Station prior to the TIP. According to Mr. Barbhuiya, save and except the TIP, there is nothing to connect the applicant/accused with the occurrence.

Ms. S. Jahan, learned APP, Assam, appearing for the State has referred to the objection filed by the State and has argued that although the victim had in-fact seen the accused in the Police Station two days after the incident, yet, she had remained consistent during the TIP and has clearly identified the accused although, she could not identify the other persons arrested by the Police. Mrs. P.B. Bordoloi, learned Legal Aid Counsel for the respondent no. 2 had adopted her arguments and submitted that this being a heinous offence, no leniency should be shown towards the applicant.

We have considered the arguments made at the Bar and have also gone through the materials available on record.

From the evidence of the victim/prosecutrix, viz, PW-1, it is apparent that just two days after the incident, she went to the Police Station wherein, she had seen the accused. The TIP was conducted ten days after the occurrence. However, in the meantime, the victim had already seen the accused in the Police Station. Under such circumstances, it is doubtful as to whether any credence can be given to the findings of the TIP in so far as its probative value is concerned. It appears that save and except the TIP, there is no other material to connect the applicant/accused to the incident.

After going through the evidence of the IO (PW-8) we do not find any materials to indicate the basis on which the accused persons including the applicant were arrested by the Police. The IO has apparently stated that he cannot disclose the procedure adopted for arresting the accused persons. As noted above, it *prima facie* appears that save and except the TIP, there is no other incriminating material available on record to connect the applicant/accused with the incident.

Though the incident is serious and very unfortunate, yet, law is well settled that unless the prosecution succeeds in establishing the charge beyond reasonable doubt, no person can be convicted or sentenced to imprisonment.

Under the circumstances, we are of the view that this is a fit case where the accused /applicant deserves to be released on bail pending disposal of the appeal.

We, accordingly, direct that the applicant/accused ***Sanajul Haque Laskar*** be released on bail on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) and two local sureties of like amount to the satisfaction of the learned Additional Session Judge (POCSO), Cachar, Silchar.

It will be open for the learned Additional Session Judge to impose any other condition(s) upon the accused/applicant for his release on bail.

Before parting with the case record, we make it clear that the observations made herein above are tentative in nature and have been made purely for the purpose of considering the prayer made in the IA. Such observations shall have no bearing at the time of hearing of the appeal on merit.

IA stands disposed of accordingly.

JUDGE

JUDGE

sukhamay

Comparing Assistant