

GAHC010126962024



2024:GAU-AS:12321

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

Case No. : I.A.(Crl.)/644/2024

DIPANKAR KUMAR SINHA
S/O LATE SURENDRA KUMAR SINHA, R/O HOUSE NO. 40, INDIRA NAGAR,
BAISTHA, GUWAHATI, P.S.- BASISTHA, DIST.- KAMRUP (M), PIN- 781029.

VERSUS

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

2:SONU SWARGIARY
D/O RAM CHARAN SWARGIARY

PERMANENT ADDRESS- VILL.- PHAHURABARI
P.S.- TAMULPUR
DIST.- BAKSA
PIN- 781367.
PRESENT ADDRESS- DIPIKA GIRLS HOSTEL
RAJGARH
GUWAHATI
P.S.- CHANDMARI
DIST.- KAMRUP (M)
PIN- 781003

Advocate for the Petitioner : MR. R P SARMAH, MR. D DOLEY,MS A DEKA

Advocate for the Respondent : ,

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

05.12.2024

Heard Mr. R. P. Sharma, learned Senior Counsel assisted by Mr. D. Doley, learned counsel for the applicant. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 389 of the Code of Criminal Procedure, 1973, praying for suspension of sentence passed against the accused/applicant and to allow him to go on bail.

3. Mr. Sharma, learned Senior Counsel, has submitted that vide the impugned Judgment and Order dated 10.05.2024, passed by the learned Additional Sessions Judge (FTC) No. 4, Kamrup (M), in Session Case No. 75/2016, the present applicant was convicted under Section 376 of the IPC and sentenced to undergo rigorous imprisonment for 7(seven) years, along with a fine of Rs. 10,000/- (Rupees ten thousand only); in default, he is to undergo simple imprisonment for another 6(six) months.

4. He further submitted that the connected appeal, being CrI.A. No. 218/2024, has been preferred by the petitioner against the Judgment and Order dated 10.05.2024, and submits that there is a strong chance of acquittal for the present applicant.

5. Mr. Sharma, learned Senior Counsel, has submitted that both the victim and the present applicant were in a love relationship, and even if there was any sexual relationship between them, it was consensual. Therefore, the applicant

has not committed any offence as alleged against him. He further submits that the victim was inside the car for about three hours, but the question arises as to why she did not shout for help. Moreover, the driver was very much present in the car, and it is surprising that the prosecution did not examine the said driver, who was a vital witness in the prosecution's case. He further submitted that the silence of the victim at the time of the alleged kidnapping and rape establishes that the prosecutrix went with the applicant of her own free will and consent. Even if any sexual intercourse occurred, it was entirely with the consent of the victim. Furthermore, from the evidence of P.W.3, the doctor, it is evident that the prosecutrix had sexual intercourse inside the car when she went to Shillong on 19.04.2010, from which it is clear that no offence was committed against the victim, and the act was consensual.

6. He further submits that the petitioner is suffering from various ailments, including some heart problems, and requires immediate medical attention, which may not be possible inside the jail premises. In this regard, he submits that a letter addressed to the Superintendent of Central Jail, Guwahati, written by the wife of the applicant, requesting proper arrangements for his treatment and to arrange for the required tests. Considering the facts of the case as well as the health condition of the petitioner, he accordingly prays for the release of the applicant on bail by suspending the sentence imposed on him. He further submits that the petitioner is a permanent resident of the addressed locality, and there is no chance of absconding if bail is granted.

7. In this regard, Mr. Baruah, learned Additional Public Prosecutor, has submitted that it is a fact that there is no eyewitness to the incident, and the prosecutrix is the sole witness on the basis of which the impugned Judgment

and Order dated 10.05.2024 was passed. He further submits that it is a settled principle of law that a conviction can be based on the sole evidence of the prosecutrix if it inspires confidence. He further submits that there is no contradiction in the evidence of P.W.1, i.e., the victim, to disbelieve her merely because the driver hired by the accused/petitioner was not examined. The entire prosecution story cannot be disbelieved. He further submits that, based on the opinion of the doctor, it was found that sign of forceful penetration was found at the time of her examination, which is consistent with the case of the prosecution. He further submits that the defence adduced evidence from one D.W.1, who took the plea of alibi, but the applicant did not take the plea of alibi when recording his statement under Section 313 of the Cr.P.C. He further submits that it is not a fit case to allow the applicant to be granted bail at this stage. Further, the matter may be heard and decided finally within a short period.

8. Hearing the submissions made by the learned counsels for both sides, I have perused the case record. From the submission made by the learned counsel for the petitioner, it cannot be held that at this stage that there is every chance of acquittal. This Court does not find it proper to appreciate the entire evidence on record at this stage. Further, it is seen that the prosecutrix has brought some incriminating materials against the accused/applicant, and the evidence of P.W.3 also supports the prosecution's case to some extent. Though the applicant has raised the plea of health issues, no supporting documents have been filed along with the petition, nor is there any mention of the specific disease the applicant is suffering from. The letter produced before this Court, addressed to the Superintendent of Police, does not specify any ailment the applicant is suffering from.

9. Considering the entire aspect of the case, it is evident that the applicant has not made out a case for releasing him at this stage, nor has he shown any strong medical grounds to justify the suspension of his sentence. However, the jail authority is hereby directed to provide all necessary treatment and arrange for any other medical tests as advised by the doctor to ensure the applicant receives the medical assistance as required. Accordingly, this application stands dismissed.

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

11. Furnish a copy of this order to the Superintendent of Central Jail, Guwahati for information and necessary action.

JUDGE

Comparing Assistant