

GAHC010138402023



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

Case : I.A.(Crl.)/572/2023

BITUL BORGOHAIN
S/O SRI KAMAL BORGOHAIN
RESIDENT OF VILLAGE RANGALI DESAO
PS MORANHAT
DIST CHARAIDEO
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MRS RANJUMONI BORGOHAIN

W/O SRI CHITRA BORGOHAIN
RESIDENT OF VILLAGE NABILL GAON
PS DEMOW
DIST SIVASAGAR
ASSAM

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

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 17-05-2024
Suman Shyam, J

Heard Mr. P. Kataki, learned counsel for the applicant. Also heard Ms. B. Bhuyan, learned Sr. counsel/ Addl. P.P. Assam appearing for the State. Mr. M.K. Das, learned counsel is present on behalf of the respondent No. 2/ informant.

By the judgment and order dated 12-04-2023 passed by the learned Addl. Sessions Judge-cum-Special Judge (POCSO), Sivasagar in Special (POCSO) Case No. 58/2022, the applicant herein was convicted under Section 6 of the POCSO Act read with Section 376(3) of the IPC for committing sexual offence and sentenced to undergo rigorous imprisonment for 20 years and also to pay fine of Rs. 10,000/-.

Aggrieved by the judgment and order dated 12-04-2023, the applicant has preferred Crl. Appeal No. 232/2023, which is pending disposal before this Court. The present I.A. has been filed invoking the jurisdiction of this Court under Section 389(2) Cr.P.C. with a prayer to suspend the jail sentence of the applicant and also to release him on bail.

By referring to the materials on record, Mr. Kataki, learned counsel for the applicant submits that there is not even an iota of evidence to convict his client under Section 6 of the POCSO Act read with Section 376(3) IPC. Notwithstanding the same, the appellant has been convicted for committing a heinous offence and sentenced to jail

Ms. Bhuyan, learned Addl. P.P. Assam appearing for the State has, however, opposed the prayer made in the I.A. by submitting that the victim was a minor aged about 16 years on the date of occurrence and therefore, this is not a fit case for granting bail.

Mr. M.K. Das, learned counsel appearing for the respondent No. 2 has submitted that the informant is the mother of the victim and she has filed an affidavit dated 27-02-2024 in this I.A. stating that there was some controversy pertaining to a previous relationship of her daughter with another person which had a bearing on the marriage between the appellant and her daughter and that is the reason, the appellant had sent back the girl, as a result of which, the FIR had to be lodged by her. Since the appellant was refusing to take back the girl by alleging illicit relationship on her part with another

person, there was some dispute between the two families. Mr. Das, however, submits that the informant would have no objection, if the appellant is enlarged on bail.

We have gone through the testimony of the prosecution witnesses, more particularly, PW-1 i.e. the alleged victim as well as the PW-2 i.e. the informant and find that there is practically no allegation of sexual assault against the appellant by either of them. On the contrary, the basic allegation is that the appellant had forcefully married the victim but after the marriage, he had sent her back to her mother's home on the ground that the girl had an illicit relationship with another person "Pranab". In her evidence, PW-1 has mentioned about her physical relationship with "Pranab" but not with the appellant. Notwithstanding the same, the learned trial court had recorded finding of fact holding that there is evidence of several instances of physical relationship by the appellant with the victim which finding, *prima facie* does not appear to be sufficiently supported by the materials on record.

From the evidence of PW-2, it also appears that the appellant had a love affair with the PW-1 and had got married. They had lived together for a few days before sending the girl back home. It is, therefore, possible that the genesis of the case is a previous relationship which her daughter allegedly had with another person.

Considering the version of the PWs- 1 and 2 and the materials on record, we are of the opinion that this is a fit case where the appellant/ applicant deserves to be released on bail during the pendency of the appeal.

We, therefore, direct that the applicant, *viz.* Sri Bitul Borgohain be released on bail on furnishing bond of Rs. 30,000/- with one local surety of like amount, to the satisfaction of Addl. Sessions Judge, Sivasagar.

Before parting with the record we make it clear that the observations made hereinabove are tentative in nature and have been made purely for the purpose of disposal of this I.A. Such observations would not have any bearing during the final hearing of the appeal.

I.A. stands disposed of.

JUDGE

JUDGE

GS

Comparing Assistant