

GAHC010143032024



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

Case No. : I.A.(Crl.)/669/2024

SHRI BIJU BARMAN,
S/O SRI MIHIR CH. BARMAN,
RESIDENT OF VILLAGE ANGARKATA, PO BOGRIBARI, DIST KOKRAJHAR,
BTAD, ASSAM, 783349

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:SMTI.DIPIKA BARMAN
W/O- DULAL BARMAN
R/O- ANGURKATA PT-III
BOGRIBARI
KOKRAJHAR
ASSAM

Advocate for the Petitioner : MR. M U MAHMUD, MR. M U MAHMUD,MR S ISLAM,MR S H MAHMUD

Advocate for the Respondent : PP, ASSAM, MS P DAS, AMICUS CURIAE FOR R-2

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

O R D E R

06.08.2024

Heard Mr. M.U. Mahmud, learned counsel appearing for the applicant/convicted appellant and Ms. N. Das, learned Additional Public Prosecutor, Assam for the State.

2. The applicant/appellant, namely Shri Biju Barman, son of Shri Mihir Ch Barman, is a convicted accused under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO), and sentenced with rigorous imprisonment for 10(ten) years with a fine of Rs. 2,000/- (rupees two thousand), in default of payment of fine, to undergo rigorous imprisonment for another 02(two) months, as being passed by the learned Special Judge (POCSO), Kokrajhar in Special Case No.04/2017 by judgment dated 12.09.2018 arising out of Bogribari P.S. Case No.141/2016.

3. By the said judgment of conviction and sentence dated 12.09.2028, the learned Special Judge, while sentencing him under Section 4 of the POCSO Act for 10(ten) years, also passed the order that the period in custody (hajoti)(police/judicial) shall be set off from the period of imprisonment, if any.

4. Against the said judgment and order of conviction and sentence dated 12.09.2018, noted above, the applicant/convicted accused as an appellant preferred an appeal under Section 374 of the Cr.P.C on 13.12.2018 being Criminal Appeal No.09/2019 that was admitted for hearing by order dated 11.01.2019.

5. By this interlocutory application, the applicant/ appellant/convicted accused prayed for suspension of the sentence dated 12.09.2018 passed by the learned Special Judge (POCSO), Kokrajhar in Special Case No.04/2017 as well as for his bail stating that he has already completed more than half of the sentence imposed upon him by the said judgment of conviction and sentence dated 12.09.2018.

6. Mr. M.U. Mahmud, learned counsel for the applicant placed orders of the Hon'ble Supreme Court in various criminal petitions for bail, wherein the Hon'ble Supreme Court granted bail to the under trial prisoners/convicted accused, whose cases are pending for appeal, who have already undergone 50% of the actual sentence other than the life sentence.

7. From the records of said Special Case No.04/2017, it is seen that during the investigation of said Bogribari P.S. Case No.141/2016, the applicant was arrested on 08.12.2016. The learned Special Judge (POCSO), Kokrajhar in said Special Case No.04/2017, though by order dated 09.03.2017, granted bail to the applicant, but only on 16.03.2017, the applicant could furnish the bail bond and accordingly, he was released from custody on 16.03.2017 in the said Special Case No.04/2017. Thereafter, the applicant was taken into custody on 12.09.2018 on passing of the impugned judgment of conviction and sentence passed in said Special Case No.04/2017 and since then, he is serving the sentence.

8. In that manner, the applicant/appellant/convicted accused have already served a sentence of almost 06(six) years 01(one) month and 11(eleven) days as on today out of the sentence imposed upon him under Section 4 of the POCSO Act by the impugned judgment dated 12.09.2018 passed in Special Case No.04/2017 by the learned Special Judge (POCSO), Kokrajhar.

9. Considering the above, the sentence imposed upon the applicant/appellant/convicted accused by the impugned judgment dated 12.09.2018 passed by the learned Special Judge (POCSO), Kokrajhar in Special Case No.04/2017, arising out of Bogribari P.S. Case No.141/2016 is

suspended until further order(s) of the Court.

10. Further, it is directed that the applicant/appellant/ convicted accused, namely, **Shri Biju Barman** be released on bail on furnishing a bail bond of Rs. 25,000/- (rupees twenty five thousand) with 02 (two) local sureties of the like amount to the satisfaction of the learned Special Judge (POCSO), Kokrajhar, to be furnished by the applicant/appellant/convicted accused named above, as per the terms and conditions that may be imposed by the learned Special Judge (POCSO), Kokrajhar, securing his presence before the said Court whenever he is required in connection with said Special Case No.04/2017 arising out of Bogribari P.S. Case No.141/2016.

11. With the above observations and directions, this Interlocutory Application stands allowed.

JUDGE

Comparing Assistant