

GAHC010144102023



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

I.A.(Crl.)/588/2023

ASKAR ALI TALUKDAR
S/O LATE TASIR ALI TALUKDAR
RESIDENT OF HILL VIEW MASJID PATTY
PS MARGHERITA
DIST TINSUKIA
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MD. MOHIBUL ISLAM
S/O LATE NURUDDIN ISLAM

RESIDENT OF HILL VIEW
MARGHERITA
PS MARGHERITA
DIST TINSUKIA
ASSAM 786181

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

24.06.2024

Heard Mr. HRA Choudhury, the learned senior counsel assisted by Mr. I.U. Chowdhury, learned counsel appearing for the applicant. Also heard Mr. K. Baishya, the learned Addl. Public Prosecutor, Assam representing Respondent No.1.

2. This is an application under Section 389 of the Code of Criminal Procedure praying for suspension of sentence and for releasing the applicant Md. Askar Ali Talukdar on bail.

3. The applicant was facing trial for committing the offence under Section 4 of the POCSO Act and under Section 376(3) of the Indian Penal Code.

4. While passing the judgment, the learned trial court held that the prosecution failed to prove that the victim was 14 years old at the time of occurrence. Therefore, the trial court acquitted the petitioner from the charge under Section 4 of the POCSO Act. The trial court found that the evidence on record failed to prove the offence under Section 376(3) of the Indian Penal Code. However, with the help of Section 222(2) of the Criminal Procedure Code, the trial court convicted the applicant under Section 376(1) of the IPC and sentenced him to undergo 10(ten) years of rigorous imprisonment.

5. Today, I have gone through the impugned judgment passed by the learned Addl. Sessions Judge-cum-Special Judge, POCSO, Tinsukia in POCSO Case No.172/2022.

6. I have also gone through the evidence on record.

7. After going through all those things, it is hereby directed that the judgment dated 16.06.2023 passed by the learned Addl. Sessions Judge-cum-Special Judge, POCSO, Tinsukia in POCSO Case No.172/2022 shall remain stayed till disposal of the connected appeal.

8. It is further directed that the applicant/appellant Md. Askar Ali Talukdar shall be

released on bail of ₹25,000/- with a surety of like amount to the satisfaction of the learned Addl. Sessions Judge-cum-Special Judge (POCSO)/trial court, Tinsukia.

The Interlocutory Application is disposed of.

JUDGE

Benoy

Comparing Assistant