

GAHC010150102023



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

Case No. : I.A.(Crl.)/626/2023

MUNINDRA MALAKAR
S/O BHUPEN MALAKAR, VILL.- BARDADHI, P.S.- HAJO, DIST.- KAMRUP,
ASSAM, PIN- 781104.

VERSUS

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

2:PABITRA THAKURIA
W/O NAGEN THAKURIA

VILL.- BARDADHI

P.S.- HAJO
DIST.- KAMRUP
ASSAM
PIN- 781104

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./265/2023

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S/O BHUPEN MALAKAR

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

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 20.02.2024

Heard Mr. B.K. Mahajan, learned counsel for the applicant. Also heard Mr. R.R. Kaushik, learned Public Prosecutor for the State/respondent No.1.

This is an application under Section 389(3) Cr.P.C. praying for granting bail suspending sentence pending appeal to the applicant in connection with the judgment and order dated 29.05.2023 passed by the Id. Special Judge(POCSO), Amingaon, Kamrup in Special (P) Case No. 18/2018, whereby convicting the accused/applicant under Section 8 of POCSO Act

and sentenced him to undergo R/I for 5(four) years and to pay a fine of Rs.20,000/- i/d to suffer rigorous imprisonment for another 4(four) months.

The learned counsel for the applicant submits that the applicant has been detained in custody for the last one year and the connected appeal has already been admitted. It is also submitted that there are lots of contradictions in the evidence of the witnesses and there is every possibility of acquittal of the applicant in the case. Considering these aspects, the applicant be released on bail during pendency of the appeal.

On the other hand, Mr. Kaushik, learned Additional Public prosecutor has no objection in granting bail to the applicant during pendency of the appeal. It is also submitted that Ms. D. Saikia has been appointed as *Amicus Curiae* for the respondent No. 2 but she could not appear before this Court due to illness of her father. According to Mr. Goswami, the learned *Amicus Curiae* has no objection if the prayer of the applicant is allowed.

I have considered the submissions made by the learned counsel for the parties.

Considering the nature of offence as well as the fact as reflected in the case record, the prayer of the applicant is allowed.

Accordingly, the accused-applicant, named above, shall be released on bail suspending the sentence during appeal in connection with Special (P) Case No. 18/2018, under Section 8 of POCSO Act, subject to the following conditions :

- (i) The applicant shall furnish a bail bond of Rs.50,000/- with two suitable sureties of the like amount to the satisfaction of the learned Special Judge(POCSO), Amingaon, Kamrup.
- (ii) The applicant shall not leave the territorial jurisdiction of learned trial court without prior written permission from

him/her till disposal of the appeal.

Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.

In view of the above, I/A stands disposed of.

JUDGE

Comparing Assistant