

GAHC010151092022



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

Case No. : I.A.(CrI.)/562/2022

DIGANTA SAIKIA
S/O SRI SONESWAR SAIKIA, RESIDENT OF VILLAGE GOMIRI GAYAN
GAON, PS NITAIPUKHURI, DIST CHARAIDEO ,ASSAM 785662

VERSUS

THE STATE OF ASSAM AN ANR.
REPRESENTED BY PP ASSAM

2:SRI MRIDUL SWARGIARY
S/O SUNANDA SWARGIARY

RESIDENT OF TEOK BANGALI GAON
PADUMANI CHUK
PS SONARI
DIST CHARAIDEO
ASSAM 78511

Advocate for the Petitioner : MR. B K MAHAJAN, MR. A CHAUDHURY,MR. P K DAS,MR. N MAHAJAN,MR. D BORA,MS. R M SAIKIA

Advocate for the Respondent : PP, ASSAM, MS B CHOUDHURY, AMICUS CURIAE FOR R-2

Linked Case : CrI.A./235/2022

DIGANTA SAIKIA
S/O SRI SONESWAR SAIKIA

RESIDENT OF VILLAGE GOMIRI GAYAN GAON
PS NITAIPUKHURI
DIST CHARAIDEO
ASSAM 785662

VERSUS

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2:SRI MRIDUL SWARGIARY
S/O SUNANDA SWARGIARY

RESIDENT OF TEOK BANGALI GAON
PADUMANI CHUK
PS SONARI
DIST CHARAIDEO
ASSAM 785112

Advocate for : MR. B K MAHAJAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 04.11.2024

Heard Mr. B.K. Mahajan, learned counsel for the applicant. Mr. D.P. Goswami, learned Additional Public Prosecutor for the State/respondent No.1 and Ms. B. Choudhury, learned *Amicus Curiae* for the respondent No. 2.

2. This is an application under Section 389(3) Cr.P.C. praying for granting bail by suspending sentence pending appeal to the applicant in connection with the judgment and order dated 23.06.2022 passed by the learned Special Judge, Charaideo, Assam, in connection with Special (P) Case No. 49/2016, whereby convicting the accused/applicant under Section 10 of POCSO Act and sentenced him

to undergo rigorous imprisonment for 5(five) years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for another one month.

3. It is submitted by the learned counsel for the applicant that the applicant has been convicted under Section 10 of POCSO Act and sentenced to undergo rigorous imprisonment for 5(five) years, out of which the applicant has already been completed two and half years detention in jail hazot. As such, the applicant may be allowed to go on bail till disposal of the appeal.

In support of his submission, the learned counsel for the applicant has placed reliance on the following case laws-

(i) Bhagwan Rama Shinde Gosai & Ors. Vs. State of Gujarat, reported in (1999) 4 SCC 421.

(ii) Atul @ Ashutosh vs. State of Madhya Pradesh, reported in (2024) 3 SCC 663.

(iii) Kiran Kumar vs. State of M.P., reported in (2001) 9 SCC 211.

4. On the other hand, Mr. Goswami, learned Additional Public prosecutor submits that he has no objection if the prayer of the applicant is allowed.

5. The learned *Amicus Curiae* for the respondent No. 2 submits that she has no objection regarding the prayer of the applicant.

6. I have considered the submissions made by the learned counsel for the parties as well as perused the judgment of the learned trial court.

7. Considering the sentence imposed by the learned trial court, without further going into the merit of the case, prayer of the applicant is allowed.

8. Accordingly, the applicant, namely Diganta Saikia, shall be released on bail suspending the sentence during pendency of appeal in connection with Special(P) Case No. 49/2016, subject to the following condition(s):

(i) The applicant shall furnish a bail bond of Rs.20,000/- with one suitable surety of the like amount to the satisfaction of the learned Special Judge, Charaideo, Assam.

(ii) The learned Special Judge, Charaideo, Assam, will be at liberty to impose any condition(s) while granting bail to the applicant.

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

10. In view of the above, interlocutory application stands disposed of.

JUDGE

Comparing Assistant