

GAHC010155892023



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

Case No. : Crl.A./264/2023

PRAMEN DEKA
S/O LATE PANESWAR DEKA,
VILL.- BHELAPARA,
P.S.- ROWTA,
DIST.- UDALGURI, ASSAM, PIN- 784509.

VERSUS

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

2:ANIMA DEKA
W/O KAILASHJYOTI DEKA

VILL.- BHELAPARA

P.S.- ROWTA
DIST.- UDALGURI (BTAD)
ASSAM
PIN- 784509

Advocate for the Petitioner : MR. A PAUL

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(Crl.)/625/2023

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VILL.- BHELAPARA
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Advocate for : MR. A PAUL
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

12.03.2024

Heard Mr. A. Paul, learned counsel for the applicant as well as Mr. MP Goswami, learned APP for the State and Mr. SJ Sarmah, learned counsel for the respondent no.2.

2. This is an application under section 389 Cr.P.C. for suspension of sentence and to allow the appellant/ applicant to go on bail pending disposal of

the connected criminal appeal arising out of the impugned judgment and order dated 30.05.2023 passed by the learned Special Judge, Udalguri in Special (POCSO) Case no.01/2020 convicting the appellant/applicant to undergo SI for 5 years alongwith a fine of Rs.2000/- and in default of payment of fine, to undergo SI for another 3 months for the offence under section 10 of POCSO Act.

3. It is submitted by the learned counsel for the applicant that the accused/applicant is about 79 years of age. He is suffering from various ailments and it is not possible to give proper treatment to such age old person inside the jail. It is also submitted that accused applicant has been languishing in jail for last one year from the date of judgment including the period of investigation and trial.

4. It is further submitted that the accused has been wrongly convicted under section 10 of the POCSO Act but he ought to have been convicted for the offence under section 8 of the POCSO Act wherein the maximum punishment is three years. It is also contended that there are several contradictions in the statement of the witnesses and there is every possibility of the applicant to be acquitted in the case.

5. On the other hand, learned counsel for the respondent no.2 has admitted that there is no dispute regarding age of the applicant. Learned APP has also submitted that there is a scope to convert the offence from section 10 to section 8 of POCSO Act.

6. I have considered the submissions of learned counsel for the parties. Perused the judgment.

7. A report was called for from the Medical and Health Officer, District Jail, Udalguri regarding health status of the applicant which reveals that the accused/applicant is suffering from lung infection and he is also suffering from eye related problem. It is also reported that he is under treatment with parental antibiotic for his lung infection.

8. Considering the age and the health condition of the applicant, as well as the background of the case, the prayer of the applicant is allowed suspending sentence during pendency of the appeal. He is allowed to go on bail on furnishing bail bond of Rs.50,000/- (Rupees fifty thousand only) with two suitable sureties of the like amount to the satisfaction of the learned Special/ Session Judge, Udalguri.

9. The bail is granted on the following conditions:

- (i) The applicant shall appear to the investigating officer of Udalguri Police Station, District-Udalguri under which he resides and provides a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switch on all the times;
- (ii) The applicant shall neither contact nor interact whether directly or indirectly with the victim or her family members in any manner whatsoever;

- (iii) The applicant shall also not visit the locality in which the victim resides, and
- (iv) The applicant shall not indulge in any kind of unlawful act that would prejudice the pending proceeding.

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

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

JUDGE

Comparing Assistant