

GAHC010169422021



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

Case No. : I.A.(Crl.)/443/2021
in
Crl. A. No. 171/2021

MD. RANU AHMED
S/O LATE SAYED UDDIN AHMED, R/O VILL- BIHUBOR, UGRIJAN, P.S.-
BIHUBOR, DIST- SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MRS. KULSUMA BEGUM
W/O MD. RANU AHMED
R/O VILL-LIGRIPUKHURI
NAGAGAON (NEAR NA-PARA NAGAJAN PRATHAMIC BIDYALAYA)
P.S.-NAZIRA
DIST-SIVASAGAR
PIN-78568

Advocate for the Petitioner : MR P KATAKI, MRS. M D BORUAH, MRS R BEGUM
Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

28-08-2024

Heard Mr. P. Kataki, learned counsel for the applicant and Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the opposite party No.1. Also

heard Mr. S. Nawaz, learned Amicus Curiae for the opposite party No.2.

2) By judgment and order dated 13.09.2021, passed by the learned Special Judge, Sivasagar in Special (POCSO) Case No. 34/2017 (arising out of Bihubor P.S. Case No. 37/2017) convicted the applicant under Sections 6/18 and under Section 10 of the POCSO Act, and also under Section 323 of the IPC and accordingly, sentenced him to undergo Rigorous Imprisonment for a period of 10 (ten) years with fine of Rs.10,000/-, in default of payment of fine, to further Simple Imprisonment for 3 (three) months under Section 6/18 of the POCSO Act and also sentenced him to R.I. for a period of 5 (five) years with fine of Rs.5,000/-, in default of payment of fine, to further Simple Imprisonment for 2 (two) months under Section 10 of the POCSO Act and further, sentenced to undergo S.I. for 6 (six) months for committing offence under Section 323 IPC, where, all the sentences to run consecutively, i.e., one after another.

3) Aggrieved with said conviction and sentenced dated 13.09.2021, the applicant as an appellant preferred a statutory appeal under Section 374(2) of the CrPC being Crl. A. No. 171/2021 and by order dated 10.11.2021 said Crl. A. No. 171/2021 of the applicant was admitted for hearing.

4) By this application, the applicant/convicted accused appellant prayed for suspension of said conviction and sentence dated 13.09.2021, passed by the learned Special Judge, Sivasagar in Special (POCSO) Case No. 34/2017, noted above and to release him on bail stating that since the date of the impugned judgment dated 13.09.2021 he is in custody serving the sentences.

5) Mr. Kataki, learned counsel for the applicant/accused appellant submitted that the FIR of the case relating to said Bihubor P.S. Case No. 37/2017 was lodged on 05.07.2017 whereas, the alleged incident took place on 25.04.2017

but the FIR of the case does not contain any ground regarding such delay of more than 70 days/two months of lodging such FIR, whereas, such unexplained delay proves to be fatal in the case.

6) It is also stated by the applicant that the informant in her evidence clearly stated that there was a marital dispute due to which they were staying separately and she further admitted that she used to gossip and mingle with one Fazar Ali which the applicant used to dislike.

7) It is also stated that the victim, Pw-2 in her evidence admitted that she did not state before police that taking advantage the applicant, her father used to show his penis from where semen stains came out and that the evidence of said Pw-2 is wholly unreliable.

8) The evidence of Pw-3, distant relative of Pw-1 informant that inspite of knowing about the incident prior to the lodging of the FIR, she herself along with the Pw-1 and brother of Pw-1 did not go to the house of the accused to enquire about the matter, where the said Pw-3 admitted that for maintaining a family of four members an amount of Rs.20,000/- is required per month for food and other expenses.

9) The applicant also stated that the evidence of Pw-4 cousin sister of Pw-1 indicates that prior to lodging of the FIR of the case, mother of Pw-1 driven out the informant and her 3 daughters including the victim after which it is the Pw-4 who gave shelter to them but it is not the informant, who informed her about the incident rather it is the victim Pw-2 informed her about the incident.

10) The applicant stated that the Pw-2 victim was studying at college whereas, second and third daughter was studying in High School and L. P. School respectively and that there was no cordial relation between the Pw-1

informant and the Pw-2 victim and thereby genesis of the prosecution was suppressed.

11) Pw-5 in her evidence for the first time submitted against the applicant/convicted accused that Pw-2 after leaving the house of the applicant told her that the accused used to go in front of her in nude and looks at her with bad eyes, but the said fact was never been told before police and stated for the first time before the Court, thereby did not corroborate the statements of Pw-1 and Pw-2.

12) The applicant also stated that the relation between the informant Pw-1 and one Fazar Ali are apparent from the evidences of the prosecution witnesses and non examination of mother and brother of the Pw-1 informant cast serious doubt about the veracity of the case.

13) For the aforesaid reasons, the applicant prayed for stay of the operation of the impugned judgment and order of conviction and sentence dated 13.09.2021.

14) Registry has already received the relevant record from the Special Court, Sivasagar and has already prepared the Paper Book and served its copies to the counsel for the applicant/appellant as well as respondents.

15) Considered the relevant records.

16) From the records, it is seen that during pendency of investigation of said Bihubor P.S. Case No. 37/2017 he was arrested on the night of 07.07.2017. Later, the Special Judge (POCSO), Sivasagar by order dated 05.08.2017 granted him bail. Later on furnishing bail bond through bailor on 11.08.2017, the applicant was released on bail on 11.08.2017 itself. He is in custody and serving the sentences since 13.09.2021.

17) Perused the Section 164 CrPC statement of the informant, Pw-1 wife of the applicant/convicted accused as well as the Section 164 CrPC statement of the minor victim, eldest daughter of the applicant/appellant accused. Also perused the evidence of the prosecution witnesses including the informant/victim Pw-1 as well as the minor victim Pw-2 as well as their cross examination by the defence.

18) Considering the material evidences available in the record and the decision of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh Vs. Mahendra @ Golu* decided on 25.10.2021 reported in *AIR 2021 SC – 5242*, this Court is of the view that it is not a fit case to stay the impugned judgment and order of conviction and sentence dated 13.09.2021, passed by the learned Special Judge, Sivasagar in Special (POCSO) Case No. 34/2017 convicting the applicant/appellant under Sections 6/18 and Section 10 of the POCSO Act, read with Section 323 of the IPC and to release the applicant/appellant who is in custody since 13.09.2021 for almost 3 years, at this stage.

19) Accordingly, this interlocutory application of the applicant/convicted accused appellant stands rejected.

JUDGE

Comparing Assistant