

GAHC010234292024



2024:GAU-AS:11249

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

Case No. : Crl.Rev.P./464/2024

MINHAJUL HOQUE @ MINAJUL HOQUE
S/O HANIF ALI
VILL- BILASHPUR,
P.S. DHALIGAON
DIST. CHIRANG, BTC, ASSAM,
PIN-783385

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SMTI. ANU DEY
W/O SRI SHAMIR DEY
VILL- T.R. PHUKAN ROAD

WARD NO. 2
P.S. AND DIST. BONGAIGAON
ASSAM
PIN- 78338

Advocate for the Petitioner : MR. A M AHMED,

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

19.11.2024

Heard Mr. A. M. Ahmed, learned counsel for the petitioner. Also heard Mr. B. J. Baruah, learned Additional Public Prosecutor for the State respondent.

This application is filed under Section 438 *read with* Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the impugned order dated 28.08.2024 passed by the learned Special Judge, Bongaigaon, Assam, in Special (POCSO) Case No. 14 (BNG) of 2019, arising out of Bongaigaon P.S. Case No. 383/2019, registered under Section 366 (A) of the IPC *read with* added Section 4 of the POCSO Act, 2012, whereby petition No. 1835/2024 praying for an adjournment to produce the defence witnesses was rejected.

Mr. Ahmed, learned counsel for the petitioner, has submitted that after recording the statement under Section 313 of the Cr.P.C., the accused/petitioner filed a petition praying to adduce defence witnesses before the court. Accordingly, the case was fixed for DWs on 03.11.2023. However, on 03.11.2023, the petitioner was absent, and an absent petition was filed, which was allowed, and the matter was fixed for 08.12.2023. Thereafter, on two or three occasions, adjournments were sought by the engaged counsel of the accused/petitioner, and the matter was subsequently fixed for 14.05.2024 for DWs. On that date, however, the Presiding Officer was on training, although the accused appeared along with DWs Hanif Ali and Mafizur Rahman. As a result, the DWs could not be examined. On the next date, i.e., 11.06.2024, one DW, Hanif Ali, was present, but the learned Special Judge was on leave, and

therefore the DW could not be examined. However, the accused/petitioner failed to produce the DWs on two consecutive dates, i.e., 22.07.2024 and 28.08.2024, after which the prayer for adjournment was rejected by the learned Special Judge, and the case was fixed for arguments.

He further submitted that there was no negligence on the part of the accused/petitioner and that due to the absence of the learned Special Judge, the DWs could not be examined. However, he admits that on 2-3 consecutive dates, the accused/petitioner could not produce the DWs. He further submits that, without any further adjournment, the accused/petitioner will produce the DWs and he accordingly prays that one more chance be given to the petitioner.

On the other hand, Mr. Baruah, learned Additional Public Prosecutor, has submitted that from the order-sheet, it is evident that the case has been pending at the stage of DWs for a considerable time, and the petitioner has failed to produce the DWs despite taking consecutive adjournments. He further submitted that, as the matter relates to POCSO, respondent No. 2/informant should be heard before any order is passed.

Considering the submissions made by the learned counsels for both sides, and other aspects of the case, and also considering the fact that on consecutive dates the DWs were present, but due to some inconvenience on the part of the learned Special Judge, they could not be examined, this Court is of the opinion that one more chance may be given to the petitioner to produce the DWs before the Court. It is further directed that on the next date fixed, the DWs should be produced before the Court, and no further adjournment will be granted to the petitioner.

With the above observations, this petition stands allowed and disposed of at the motion stage itself.

JUDGE

Comparing Assistant