

GAHC010240942023



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

Case No. : I.A.(Crl.)/1029/2023

NUR ISLAM SK @ NUR ISLAM SHEIKH
S/O LATE ASMAT ALI SK
RESIDENT OF HEKAIPARA, PO CHANDRAPARA, PS AND DIST
KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:KULCHUMA BIBI
W/O MD. SAHEJ UDDIN SK

RESIDENT OF HEKAIPARA
PO CHANDRAPARA
PS AND DIST KOKRAJHAR
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./397/2023

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S/O LATE ASMAT ALI SK
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ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 10.05.2024

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Mr. Z. Hussain, learned counsel for the applicant. Also heard Mr. R.J. Baruah, learned Public Prosecutor for the State/respondent No.1.

2. This is an application under Section 389 Cr.P.C. praying for granting bail by suspending sentence pending appeal to the applicant against the judgment dated 06.10.2023 passed by the learned Assistant Sessions Judge, Kokrajhar, Assam, in connection with Sessions Case No.T-2/12/2022, whereby convicting the accused/applicant under Section 376 IPC and sentenced him to undergo

rigorous imprisonment for 10(ten) years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for another 1(one) month.

3. The learned Senior counsel for the applicant submits that in this case, there is one eye witness i.e. P.W.5 who has stated that he had seen that his mother was sleeping along with his uncle i.e. present petitioner, but his mother/victim did not say anything when his father came home and thereafter, he narrated the incident to his father. It is also the submission of learned counsel for the applicant that the medical officer who examined the victim clearly stated that the victim was brought for her examination after the incident, but she refused to do so.

4. The learned Senior counsel for the applicant submits that considering such fact, it is not a case under Section 376 IPC by which the accused was convicted as the victim is a consenting party to the alleged offence.

5. 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.

6. On the other hand, Mr. Baruah, learned Additional Public prosecutor submits except the victim, there is one eye witness i.e. P.W.5 who only stated that the applicant and his mother/victim was sleeping together. He further submits that other witnesses did not say anything about the incident. It is further submitted that it is a case where the accused was convicted for 10 years.

7. I have considered the submissions made by the learned counsel for the parties as well as perused the judgment of the learned trial court.
8. Considering the submission of learned counsel for the parties, without going into the merit of the case, prayer of the applicant is allowed.
9. Accordingly, the appellant-applicant, named above, shall be released on bail suspending the sentence during appeal in connection with Sessions Case No. T-2/12/2022, under Section 376 IPC, subject to the following conditions :
 - (i) The applicant shall furnish a bail bond of Rs.50,000/- with two suitable sureties each of the like amount to the satisfaction of the learned Assistant Sessions Judge, Kokrajhar, Assam.
 - (ii) The learned Assistant Sessions Judge, Kokrajhar, Assam will be at liberty to impose any condition(s) while releasing the applicant on bail.
10. Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.
11. In view of the above, interlocutory application stands disposed of.

JUDGE

Comparing Assistant