

GAHC010246562023



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

Case No. : I.A.(Crl.)/1135/2023

BISWAJIT BAKTI
S/O-LT.-PRADIP BAKTI, R/O-VILL-KANU GAON, BAKTI LINE, SOKITING
T.E., P.S.-GOLAGHAT, DISTRICT-GOLAGHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
SRI SANDHYA BAKTI, W/O-SRI PAPU BAKTI, R/O-VILL-KANU GAON,
BAKTI LINE, SOKITING T.E., P.S.-GOLAGHAT, DISTRICT-GOLAGHAT,
ASSAM, PIN-785619

2:SANDHYA BAKTAI
W/O-SRI PAPU BAKTI
R/O-VILL-KANU GAON
BAKTI LINE SOKITING T.E.
P.S.-GOLAGHAT
DISTRICT-GOLAGHAT
ASSAM

Advocate for the Petitioner : MS N HASSAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 24-05-2024

[Manish Choudhury, J.]

Heard Ms. N. Hassan, learned counsel for the applicant-appellant; Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. R. Das, learned for the

opposite party no. 1, State of Assam; and Mr. A. Ahmed, learned Amicus Curiae appearing for the opposite party no. 2-informant.

2. This is an application under Section 389, CrPC seeking suspension of execution of the sentence passed against the applicant-appellant in Special [P] Case no. 35/2020 and for his release on bail. The applicant as the appellant, has preferred the connected criminal appeal, Criminal Appeal no. 133/2023 against a Judgment dated 22.06.2023 and an Order of Sentence dated 23.06.2023 passed in Special [P] Case no. 35/2020 by the Court of learned Special Judge, POCSO at Golaghat ['the trial court', for short]. By the Judgment dated 22.06.2023, the applicant-appellant has been convicted for the offence under Section 6 of the Prevention of Children from Sexual Offences [POCSO] Act, 2012 and by the Order on Sentence, the applicant-appellant has been sentenced to undergo rigorous imprisonment for 20 [twenty] years and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo rigorous imprisonment for another 3 [three] months.

3. As per the case of the prosecution, the age of the alleged victim was about 4 [four] years. On the said aspect, the defence is found to have raised no challenge. The victim has been examined by the learned trial court as P.W.2 wherein she deposed about aggravated sexual assault. Her such testimony is found to be not inconsistent with her previous statement, recorded under Section 164, CrPC. The Medical Examination Report in the form of Ext.-1 and the testimony of the doctor, P.W.4 who examined the victim on 13.03.2020, that is, within 2 [two] days from the date of occurrence on 11.03.2020, are found to be supportive of the testimony of the victim. The testimonies of the informant-mother, P.W.1 is also found prima facie in support of the allegation made in the FIR, Ext.-3. On a prima facie consideration of all these facts apart from the presumption under Section 29 of the POCSO Act, 2012, which got operational against the applicant-appellant, this Court is of the considered view that the applicant-appellant has not been able to make out any prima facie case for suspension of the execution of the sentence passed against him by the learned trial court.

4. In the above view of the matter, the instant application entails rejection and it is

accordingly held.

5. The observations made herein only for the purpose of considering the instant application under Section 389, CrPC and such observations shall not be construed as observations in respect of merits of the connected appeal, which is to be considered independent of those observations.

JUDGE

JUDGE

Comparing Assistant