

GAHC010252092023



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

Case No. : Crl.A./410/2023

SADDAM HUSSAIN
S/O RAJAB ALI,
R/O PALHAZI AMINPARA,
P.S.- BARPETA, DIST.- BARPETA, ASSAM.

VERSUS

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

2:SEKANDER ALI
S/O LATE GAJ NABI

R/O PALHAZI AMINPARA

P.S.- BARPETA
DIST.- BARPETA
ASSAM
PIN

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(Crl.)/1085/2023

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S/O RAJAB ALI

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

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER

31.05.2024

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Mr. H. Ali, learned counsel for the applicant. Also heard Mr. K. Bhaisya, learned Additional Public Prosecutor for the State respondent No. 1 and Ms. B. Sharma, learned Amicus Curiae appearing on behalf the respondent No.2.

2. This application filed under Section 389 of the Code of Criminal Procedure, 1973, praying for suspension of sentence and to release the accused/applicant on bail during the pendency of the connected appeal i.e. CrI.A. No.410/2023.

3. It is submitted by the learned Senior counsel, Mr. Choudhury that a Criminal Appeal has already been preferred by the accused/applicant challenging the impugned Judgment and Order dated 12.10.2023 passed by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Barpeta in Special POCSO Case No.08/2020, whereby, convicting the accused/applicant under Section 365 of IPC *read with* Section 4 of POCSO Act and sentencing him to undergo Rigorous Imprisonment for 4(four) years and also to pay a fine of Rs. 3,000/- (Rupees three thousand) only and in default S.I for 6(six) months and under Section 4 of POCSO Act to undergo R.I. for 7(seven) years and also to pay a fine of Rs.10,000/- (Rupees ten thousand) only and in default, S.I for another 1(one) year.

4. He further submitted that there are sufficient material contradictions in the evidence of the PWs and testimonies of PWs are not at all believable and there is every chance of succeeding the connected appeal. He mainly emphasized on the evidence of PWs 1, 2 and 3 who are the informant, victim and the village headman respectively. He submitted that from the evidence of the PWS, it is evident that the house of the accused is very near to the house of the informant and it was within the knowledge of the informant that the victim was kidnapped by the accused/applicant and was kept in his house. Despite knowing the fact that the victim was kept in the house of the accused/applicant, the parents or the informant did not visit to the house of the accused/applicant to recover the victim.

5. More so, from the evidence of the PW-3, it is seen that the victim had a love affair with the accused/applicant and the family members of the informant was also putting pressure on the accused/applicant to marry the victim, but, the

marriage proposal was refused by the family members of the accused/applicant, as the victim had not attained her majority for solemnizing marriage. He further submitted that as per the PW-3 that the meeting was held on the day of the incident itself and thus, the allegation of penetrative sexual assault committed upon the victim by the accused/applicant is totally false and concocted one.

6. Mr. Choudhury, learned Senior counsel further submitted that as per the doctor, he did not find any sign of recent sexual intercourse upon the victim, however, it has been opined that earlier she had exposed to sexual intercourse. Accordingly, he submits that there are sufficient grounds for acquittal of the accused/applicant. And, the accused/applicant, being the local resident of his addressed locality, there is no chance of absconding if he is enlarged on bail and further submitted that while he was on bail, he never jumped over any condition of bail during the trial of the case.

7. In this context, Mr. Bhaisya, learned Additional Public Prosecutor has submitted that the victim has brought the clear allegation of penetrative sexual assault against the accused/applicant while she was kept confined in the room by the accused/applicant and the statement of the victim recorded under Section 164 of Cr.P.C. also corroborates her evidence. Accordingly, he raised objection and submitted that it is not a fit case to release the accused/applicant on bail by suspending his sentence.

8. On the other hand, Ms. Sharma, learned Amicus Curiae has submitted that the victim was minor at the relevant time of the incident and the medical examination of the victim was also conducted after 8 days of the incident and hence, there may not be any sign of sexual intercourse at the time of examination of the victim which is quite probable. She also submitted that the

accused/applicant had not disputed the minority of the victim. Accordingly she raised objection on the prayer made by the learned counsel for the accused/applicant and requested to hear the appeal finally.

9. Considering the submissions of learned counsels of both sides as well as considering the materials available in the case record; the evidence of the PWs; previous conduct of the accused/applicant and also the grounds taken in the criminal appeal, I find it appropriate to allow this interlocutory application. Accordingly, the operation of the impugned Judgment and Order dated 12.10.2023 passed by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Barpeta in Special POCSO Case No.08/2020, stands stayed/suspended till disposal of the connected appeal, being CrI.A.No.410/2023.

10. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Additional Sessions Judge-cum-Special Judge (POCSO), Barpeta, the accused/applicant, namely, Saddam Hussain, be enlarged on bail, subject to the following conditions:

- (i) that the applicant shall not leave the jurisdiction of the learned Additional Sessions Judge-cum-Special Judge (POCSO), Barpeta, without prior permission.

11. In terms of above, this interlocutory application stands disposed.

12. List the connected Criminal Appeal No.410/2023 in its usual course.

JUDGE

Comparing Assistant