

GAHC010258262022



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

Case No. : I.A.(Crl.)/54/2023

BIDHAN TANTIA AND ANR.
S/O GOPAL TANTIA, R/O FATIKACHOWA BORBAM, P.S.- MORAN, DIST.-
DIBRUGARH.

2: BITU SINGH
S/O LATE JOYRAM SINGH

R/O FATIKACHOWA BORBAM

P.S.- MORAN
DIST.- DIBRUGARH

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 07.02.2024
(K.R. Surana, J)

Heard Mr. P. Deka, learned counsel for the applicants and Ms. M. Das, learned APP for the State.

2. By filing this interlocutory application under Section 389 CrPC, the applicants, who have been convicted of commission of offence punishable under Section 6 of the POCSO Act and Section 376-DA IPC vide judgment and order of conviction dated 28.09.2022 passed by the learned Addl. Sessions Judge (FTC)-cum- Special Judge, POCSO, Dibrugarh in POCSO Case No.12/2022, and sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.3,000/- with default stipulation, have prayed for suspension of sentence.

3. The prayer for suspension of sentence and for bail is opposed by the learned APP and in this regard she has referred to the written objection filed by the State on 28.02.2023 and she has referred to the evidence of the six PWs examined by the prosecution including the doctor and the I.O. and it is submitted that the victim was enjoying a cultural function at Tiloi Gramya Bazar and on the pretext of going to a nearby shop, the minor girl was taken away from the place. Thereafter, taking advantage of isolation, the applicants had pushed her into a drain and committed rape on her. It is submitted that, the evidence was to the effect that the applicants had raped the victim one by one, and while one was engaged in sexual assault, the other was holding her hands and they have also recorded the act in mobile phone and threatened her to make it viral. It is also submitted that the Medical Officer in the medical examination report of the victim had recorded that the hymen was ruptured. It has been submitted that although there was no injury but that could be explained by the fact that as per the medical Officer's report, the presence of spermatozoa could not be detected as the victim had washed with soap and detergent, the same may be negative. Accordingly, it is submitted that the

statement of the victim was sufficient to convict the applicants.

4. Considered the material which is available on record. Though we are not examining the evidentiary value of the prosecution witnesses at this stage, yet few circumstances which have come to the notice of the Court indicate lapses on part of the I.O. to carry out the investigation in an appropriate manner. It appears from the cross-examination of the I.O. that he had not identified the exact location where the victim girl was raped. As per the evidence of PW, the girl was covered by mud, yet no garments of the victim girl was seized and sent for forensic analysis. The medical evidence does not suggest any injury on the private part of the victim girl although the allegations are to the effect that the applicants have raped her in quick succession after pushing her into a drain and then committed rape. It is noticed that the offence took place on 03.12.2021 at about 1:30 AM and on the same date, the victim girl was taken for medical examination at 2.30 PM. Moreover, as per the statement of the victim girl, the applicants had taken photographs in the mobile phone. However, as per the I.O., as no evidence of photograph of the offence was found in the mobile, the mobile phone was returned which also indicates that the I.O. did not send the mobile for forensic examination to find out if there was an image captured of the offence, which was later on deleted, which could have been found on forensic analysis of the mobile phone.

5. It appears from the LCR that the applicants were arrested on the same date of the commission of offence and thereafter, they are both in jail custody since then.

6. Having regard to the discussions above, the Court is inclined to suspend the sentence imposed upon the applicants vide judgment and order of conviction dated 28.09.2022 passed by the learned Addl. Sessions Judge (FTC)-

cum- Special Judge, POCSO, Dibrugarh in POCSO Case No.12/2022 by allowing the applicants to go on bail on furnishing fresh bail bond of Rs.1,00,000/- (Rupees one lakh only) each with two suitable sureties of like amount to the satisfaction of learned trial Court i.e. Addl. Sessions Judge (FTC)-cum- Special Judge, POCSO, Dibrugarh. Out of the two bailors, one should offer his/her immovable property as security having adequate value to cover the bail amount for grant of bail. Along with the bail bond, the applicants shall also submit an undertaking before the Court of learned Addl. Sessions Judge (FTC)-cum- Special Judge, POCSO, Dibrugarh to surrender before the said learned Court to suffer the sentence awarded against them in the event the appeal is decided against the applicants.

7. Bail is granted on the following conditions:-
 - a) That the applicants shall not leave the jurisdiction of Dibrugarh District without prior intimation to the Officer-in-charge of Moran PS.
 - b) The applicants shall appear before the Officer-in-charge of Moran PS once a month within seven days of each English calendar month and on their appearance, the Officer-in-charge of Moran PS shall make a GD entry of their appearance. The Officer-in-charge of Moran PS shall submit a report to this Court through the office of the Public Prosecutor, Assam at Gauhati High Court in the event the applicants do not appear before him within first week of every English calendar month.
8. This interlocutory application stands allowed.

JUDGE

JUDGE

Comparing Assistant