

GAHC010269732022



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

Case No. : I.A.(Crl.)/1132/2023
IN Crl.A./429/2023

RAJ SAHANI
S/O- SRI SIPAHI SAHANI
R/O-MATIPUL-2
P.S.-KHATKHATI

DIST-KARBI ANGLONG
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR . B
REPRESENTED BY PP ASSAM

2:SMTI. RUMLI DEVI
W/O- SRI MUKHESWAR JADAV
R/O-VILL.-SANTIGAON-1

P.S.-KHATKHATI
DIST- KARBI ANGLONG
ASSAM. PIN-782480

Advocate for : MISS M GOGOI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR . B

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 24.01.2024

Heard Mr. S.A. Ahmed, learned counsel for the applicant. Also heard Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent No. 1 State of Assam and Mr. E.A. Ahmed, learned counsel for the respondent No. 2.

2. This application under Section 389 of the Code of Criminal Procedure has been filed by the applicant/appellant with prayer for suspension of the judgment and order of conviction and sentence passed by the learned Special Judge (POSCO), Karbi Anglong, Diphu in POCSO Case No. 02/2017, which has been impugned by the present applicant in the connected appeal, registered as CrI.A. No. 429/2023. The applicant has also prayed for bail. It is submitted on behalf of the applicant that at present he is married to the victim. The victim and the applicant are blessed with a son. The applicant and victim are staying together as husband and wife. It is also admitted that the applicant was earlier married to the victim's elder sister.

3. I have considered the submissions at the bar with circumspection.

4. The learned counsel for the respondent No. 2 has no objection if the applicant is enlarged on bail and if the operation of judgment and order of conviction and sentence dated 20.10.2022 in connection with POCSO Case No. 02/2017 is suspended.

5. I have perused the LCR. I have considered the submissions that the victim has not implicated that the applicant committed sexual assault on her. At present the victim has attained majority. The applicant was convicted under

Section 4 of the POCSO Act, 2012 to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) with default stipulation.

6. It is also submitted that the applicant was on bail throughout the trial and he had cooperated with the trial. It is submitted that there is every possibility that the appeal will be allowed. Except the evidence of the victim's father, there is no implication against the applicant by the other witnesses.

7. Considering the submissions on behalf of the applicant and considering all aspects, petition is allowed.

8. The operation of the order of conviction and sentence dated 20.10.2022 passed by the learned Special Judge (POCSO), Karbi Anglong at Diphu in POCSO Case No. 02/2017 is stayed until further orders and the applicant is enlarged on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty Thousand) with a suitable surety of like amount to the satisfaction of learned trial Court. The learned trial Court may impose any bail conditions as the Court deems fit and proper.

9. The connected Crl.A. No. 429/2023 be listed for hearing in the usual course.

10. In the above terms this interlocutory application stands disposed of.

JUDGE

Comparing Assistant