

GAHC010274682023



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

Case No. : I.A.(Crl.)/1196/2023

MOMINUL HAQUE @ MOMINUL ISLAM
S/O LT. NASIR UDDIN, R/O NO. BARDOLONI, P.S.- BAGHBOR, P.O.-
MANDIA, DIST. BARPETA, ASSAM, ASSAM, PIN- 781308.

VERSUS

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

2:SAHED ALI AHMED
S/O OSMAN ALI

R/O MANDIA GAON (PURANA BASTI)
P.S.- BAGHBOR
P.O.- MANDIA
DIST.- BARPETA
(ASSAM)
PIN- 781308

Advocate for the Petitioner : MR J ISLAM

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./455/2023

MOMINUL HAQUE @ MOMINUL ISLAM
S/O LT. NASIR UDDIN

R/O NO. BARDOLONI
P.S.- BAGHBOR
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Advocate for : MR J ISLAM
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-07-2024

Heard Mr. J Islam, learned counsel for the applicant/appellant and Ms. N Das, learned Additional Public Prosecutor, Assam for the State. Also heard Mr. S K Chetry, learned counsel for the opposite

party/respondent No. 2.

2. The applicant as appellant preferred the connected Criminal Appeal No. 455/2023 being aggrieved with the judgment and order dated 17.10.2023 passed by the learned Additional Sessions Judge cum Special Judge (POCSO), Barpeta in Special POCSO Case No. 09/2020, by which he has been convicted under Section 363 IPC sentencing him to undergo rigorous imprisonment for 4 years with a fine of Rs. 5,000/-, in default to suffer simple imprisonment for 6 months and further, under Section 4 of the POCSO Act, sentencing him to undergo rigorous imprisonment for 7 years with a fine of Rs. 10,000/-, in default to suffer simple imprisonment for 1 year.

3. The said appeal was already admitted for hearing by order dated 13.12.2023.

4. By this application, the applicant has prayed for suspension of the sentence passed by the learned Additional Sessions Judge cum Special Judge (POCSO), Barpeta in Special POCSO Case No. 09/2020 and to release him on bail.

5. From the records of the case that was earlier called for by the Court, it is seen that on his surrender, the applicant was taken into custody on 13.11.2017 in connection with Baghbor Police Station Case No. 287/2017.

6. During the trial of the case, the applicant was released from jail on 25.01.2018 as he was granted bail by the learned Special Judge (POCSO), Barpeta on 24.01.2018 in said Baghbor Police Station Case No. 287/2017.

7. As the applicant after obtaining bail did not appear during the trial, on the strength of the Non-Bailable Warrant of Arrest issued against him on 26.07.2023 he was again taken into custody and later by order dated 16.08.2023, this Court released him on bail in Bail Application No. 2845/2023.

8. After passing of the impugned judgment and order of conviction dated 17.10.2023 in said Special POCSO Case No. 09/2020, the applicant was again taken into custody on 17.10.2023 and since then he is serving the sentence as passed in the impugned judgment and order, noted above.

9. It is seen from the records of the case that in the 164 Cr.P.C. statement made by the victim before the learned Judicial Magistrate First Class, Barpeta on 07.11.2017 as well as in her evidence before the learned Special Judge (POCSO), Barpeta, the victim categorically stated that the applicant in the pretext of bringing her to her home from the school took away her to a different place, forcibly kept her with him for two nights and committed rape on her.

10. It is also seen from the Birth Certificate of the victim that at the time of the incident, she was less than 16 years old.

11. Considering such materials in the case records, this Court is not inclined to grant bail to the applicant/convicted accused in said Special POCSO Case No. 09/2020 at this stage.

12. Accordingly, this interlocutory application for suspension of the sentence and for bail of the applicant/appellant in said Special POCSO Case No. 09/2020 stands rejected.

JUDGE

Comparing Assistant