GAHC010286762023

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

Case No. : I.A.(Crl.)/1282/2023

JUN ALI @ MD. JUN ALI
S/O MD. JALIL ALI
VILL.- NO. 1 NIZ GARUAJHAR
P.O.- PANERIHAT
P.S.- PANERY
DIST.- UDALGURI
BTAD
ASSAM
PIN- 784523.

VERSUS

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

2:FULBHANU BEGUM
W/O MD. KALU ALI

VILL.- NO. 1 NIZ GARUAJHAR
P.O.- PANERIHAT
P.S.- PANERY
DIST.- UDALGURI
BTAD
ASSAM
PIN- 784523.

Advocate for : MR. M U MAHMUD
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

In Crl.A./483/2023

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Advocate for the Petitioner : MR. M U MAHMUD, MR. I U CHOWDHURY,MR H R A CHOUDHURY,MR N J DAS,MR N Z AZAD,MR. S. SUR,MRS. M SAIKIA,TOSLIMA BEGUM,MR S H MAHMUD,MR S ISLAM

Advocate for the Respondent : PP, ASSAM, MS. K PHUKAN (LEGAL AID COUNSEL FOR R-2)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 14/08/2026
(Shamima Jahan, J)

1. Heard Mr. I.U. Chowdhury, learned counsel for the applicant/appellant and Ms. S. H. Bora, learned APP, Assam, appearing for the state and Ms. K. Phukan, learned Legal Aid Counsel, appearing for the respondent number 2.

2. By this application filed under Section 389 of the Cr.P.C, the applicant has prayed for suspension of sentence and for releasing him on bail. The applicant has prayed for suspending the sentence imposed upon him by

judgment and order dated 22/11/2023, passed by the Court of learned Special Judge, Udalguri, in Special (POCSO) case no. 61/2019. By the said judgment and order, the learned Trial Court had convicted the appellant under section 376(3) of IPC read with section 4 of the POCSO Act and the applicant was sentenced to undergo Rigorous Imprisonment for a period of 20 years with fine and default stipulation under Section 376(3) of the IPC. However, in view of Section 42 of the POCSO Act, no sentence was imposed under Section 4 of the POCSO Act.

3. The learned counsel for the applicant submits that the conviction and sentence imposed upon the applicant was incorrectly done in view of the fact that the place of occurrence, as stated by the victim, differed in her statement before the learned Trial Court and in her statement before the Magistrate under Section 164 of the Cr. P.C. He submits that before the learned Trial Court, the victim stated that the occurrence took place in the house of one of her friend and in her statement before the Magistrate under Section 164 Cr. P.C, she stated that while she has returned from the house of her friend, she was subjected to physical intimacy by the applicant. He also submits that the Doctor's evidence does not corroborate the case of the victim and also that there is a delay of 4 days in lodging the First Information Report.

4. Ms. S. H. Bora, learned APP, however, submits that the statement of the victim before all the authorities, right from the beginning of the investigation, are consistent and as such, there is nothing to disbelieve the statement of the victim and the conviction and sentence imposed upon the applicant is based on the facts of the case.

5. Ms. K. Phukan, learned Legal Aid Counsel for the respondent no. 2 has

supported the submissions advanced by the learned APP.

6. We have heard the learned counsels for the parties and have gone through the records.

7. The arguments of the learned counsel for the applicant that the victim had stated about 2 places of occurrence, is not tenable in view of the examination of her statement under Section 164 Cr.P.C, wherein she stated that while they decided to return from the place of the victim’s friend, the applicant had subjected her to physical intercourse and at that juncture, her friend arrived at her place and saw the incident. This shows that the occurrence had taken place in the house of the victim's friend, which the victim had stated clearly in her statement before the learned Trial Court. The Doctor's evidence also seems to have corroborated the statement of the victim.

8. It is also noticed that the statement of the victim is consistent before the learned Trial Court as well as before the Magistrate.

9. In view of the said facts, this Court does not deem it fit to suspend the sentence imposed upon the applicant and to release him on bail at this stage. However, the observations made above will not have any effect on the hearing of the case.

10. The IA is accordingly disposed of.

JUDGE **JUDGE**

Comparing Assistant