GAHC010291442019

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

Case No. : I.A.(Crl.) 1004/2019

1:SRI ANJAN KR. MANJHI
S/O- SRI SURESH MANJHI, R/O- VILL.- MARIT HANSE BASTI, P.S. BORLANGPHAR, DIST.- KARBI ANGLONG, ASSAM.

VERSUS

1:THE STATE OF ASSAM AND ANR
REP. THORUGH THE PUBLIC PROSECUTOR, ASSAM.

2:SRI LAGAN RAM
S/O- LATE KUKHRAJ RAM
R/O- GOLAI BASTI
P.S. BARLAUGFER
DIST.- KARBI ANGLONG

Advocate for the Petitioner : MR. S K BARKATAKI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 14-05-2020

Heard Mr. S. K. Barkataki, learned counsel for the applicant-appellant and Mr. B. B. Gogoi, learned Additional Public Prosecutor for the respondent no. 1, State of Assam.

2. As per office note dated 11.05.2020 available in the connected Crl. A. No. 451/2019, notice on the respondent no. 2 has been dully served. There is no representation on behalf of the respondent no. 2 today when the matter is taken up for consideration, as per the order dated 27.11.2019.

3. This application is filed by the applicant-appellant under Section 389, Code of Criminal Procedure, 1973 (CrPC) seeking suspension of execution of the sentence passed against him by the judgment and order dated 23.09.2019 in POCSO Case No. 12/2018, the subject-matter of challenge in the connected appeal, Crl. A. 451/2019, and for his release on bail.

4. By the judgment and order dated 23.09.2019, the applicant-appellant has been convicted under Section 4 of the Protection of Children from Sexual Offences (POCSO) Act and he has been sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs. 1000/-, in default of payment of fine, to undergo simple imprisonment for another 2 (two) months. He has also been convicted under Section 366, IPC and on that count, he has been sentenced to undergo rigorous imprisonment for 6 (six) months. All the sentences, awarded above, are to run concurrently.

5. It is submitted that by Mr. Barkataki that the applicant-appellant is in custody since the date of the impugned judgment and order dated 23.09.2019. Mr. Barkataki has referred to the impugned judgment and order and other materials on record to submit that though the alleged victim was below 18 years, she had eloped with the applicant-appellant voluntarily and there was no force on the part of the applicant-appellant. In such view of the matter, the prayer for suspension of the sentence may be considered. He has also placed reliance in an order dated 03.08.2015 passed in B.A. No. 1036/2015 (Sunil Mahadev Patil vs. the State of Maharastra) passed by the High Court of Judicature at Bombay.

6. Mr. Gogoi, learned Additional Public Prosecutor has objected to the prayer. By referring to the original board certificate (Material Ext.-1) and the original High School Leaving Certificate (Material Ext.-2), he has submitted that admittedly, the victim was below the age of 18 years on the date of her alleged elopement and as such, the question of consent does not arise.

7. I have considered the submissions advanced by the learned counsel for the parties and also perused the materials available in the record of POCSO Case No. 12/2018.

8. I find force in the submission of the learned Additional Public Prosecutor. From the original board certificate (Material Ext.-1) and the original High School Leaving Certificate (Material Ext.-2), it is evident that on the date of lodgement of the FIR on 24.03.2018, the victim was below 18 years. The said fact finds corroboration from the medical examination report (Ext.-4). The victim in her statement recorded under Section 164, CrPC (Ext.-3) as well as in her deposition as P.W.-4, had admitted about commission of sexual intercourse with her by the applicant-appellant.

9. I have perused the order dated 03.08.2015 passed in B.A. No. 1036/2015 (Sunil Mahadev Patil vs. the State of Maharastra). In the said case, the background facts, in nutshell, were that the petitioner was arrested on 09.12.2014 and by an order dated 03.08.2015 the petitioner therein was released on bail on an application preferred by him under Section 439, CrPC. The consideration for bail of an accused under Section 439, CrPC and consideration for suspension of execution of sentence of an accused convicted after trial are on different footings. Therefore, I find that the said order dated 03.08.2015 is of no assistance to the fact situation obtaining in the present case.

10. Having considered the above materials along with the other materials available in the record, I do not find this to be a fit case, at this stage, to suspend execution of the sentence passed against the applicant-appellant. Accordingly, the prayer made in this application is not entertained. Resultantly, this application stands dismissed.

11. The observations made above, are only for the purpose of consideration of the prayer for suspension of execution of the sentence during the pendency of the appeal and the same shall not be construed to be observations made on the merits of the connected appeal.

JUDGE

Comparing Assistant