GAHC010133312026

2026:GAU-AS:15286

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

Case No. : I.A.(Crl.)/659/2026

MD JAKIR HUSSAIN
SON OF LATE RAHIMUDDIN RESIDENT OF VILLAGE NO 2 SONAPUR POLICE STATION BIHPURIA DISTRICT LAKHIMPUR ASSAM PIN 784161.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR ASSAM.

2:SMT HASNARA BEGUM
WIFE OF MD. WAHID ALI RESIDENT OF VILLAGE NO 2 SONAPUR POLICE STATION BIHPURIA DISTRICT LAKHIMPUR ASSAM PIN 78416

Advocate for the Petitioner : MS A GOGOI, MR S GOGOI

Advocate for the Respondent : PP, ASSAM, MR. S J SARMAH(R2)

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

09.10.2026

1. Heard Mr. S. Gogoi, learned counsel appearing for the applicant. Also heard Mr. R.J. Baruah, learned counsel appearing for the State of Assam and Mr. S.J. Sarmah, learned counsel appearing for the respondent No.2.

2. By this application filed under Section 430 of the BNSS, 2023 the applicant has prayed for suspension of the sentence imposed upon him vide judgment and order dated 08.07.2025 passed by the learned Special Judge, POCSO, Lakhimpur, North Lakhimpur in Special (POCSO) Case No. 146/2018 whereby the applicant was convicted under Section 313 of the IPC read with Section 4 of the POCSO Act. By the said judgment and order, the applicant was sentenced to undergo rigorous imprisonment for a period of 6 (six) years along with fine and default stipulation under Section 313 of the IPC and rigorous imprisonment for a period of 10 (ten) years along with fine and default stipulation under Section 4 of the POCSO Act.

3. The learned counsel appearing for the applicant raises three grounds in support of the prayer for suspension of sentence. Firstly, the FIR was lodged after a delay of one year from the date of occurrence which according to the learned counsel was not considered by the trial court. Secondly, the age of the victim was not duly established in accordance with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the victim was not a minor. Thirdly, there are discrepancies in the statements of the victim recorded before the police, the Magistrate and the trial court. The learned counsel further submits that the victim was treated as a minor solely on the basis of the statements made by the victim and her relatives. He also submits that the contradictions in the victim's statements were duly established through the testimony of the Investigating Officer during his examination before the trial court.

4. Mr. R.J. Baruah, learned APP on the other hand submits that the statements of the victim recorded before the Magistrate and the trial court are consistent. He further submits that the appeal may be taken up for final hearing by this

Court.

5. Mr. S.J. Sarmah, learned counsel appearing for the informant supports the submissions made by the learned APP and submits that there is no infirmity in the judgment and order passed by the trial court.

6. It is seen that the Investigating Officer, in his deposition before the trial court made a categorical statement in this regard. It is further seen that in her statement before the trial court, the victim stated that it was not true that she had not stated before the police that she was alone in her house and that the applicant had pulled her from the road and taken her to his house where the applicant along with others had raped her. The said contradiction was put to the Investigating Officer who stated that the victim had not made any such statement before the police. Accordingly, the contradiction stands proved.

7. In view of the above, this Court finds it fit to suspend the sentence imposed upon the applicant vide judgment and order dated 08.07.2025 passed by the learned Special Judge, POCSO, Lakhimpur, North Lakhimpur in Special (POCSO) Case No. 146/2018 during the pendency of the connected criminal appeal. Accordingly, the applicant is allowed to go on bail on furnishing a bail bond of Rs. 20,000/- (Rupees twenty thousand) with one local surety of the like amount to the satisfaction of the learned Special Judge, POCSO, Lakhimpur, North Lakhimpur.

8. The interlocutory application stands disposed of.

JUDGE

Comparing Assistant