GAHC010139852026

2026:GAU-AS:16791

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

Case No. : I.A.(Crl.)/753/2026

HAFIJUR RAHMAN @ HAFIZUR RAHMAN
S/O. ASARUDDIN TALUKDAR, R/O PARARCHAR PART-III, P/S ABHAYAPURI, DISTRICT BONGAIGAON, ASSAM, IN JAIL

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

2:PADU TUDU
S/O LATE LATHRO TUDU
R/O HATUGAR (F.V)
JALESHWARI
P.S. GOSSAIGAON
DISTRICT KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. I U CHOWDHURY, MR H R A CHOUDHURY,M ALAMGEER

Advocate for the Respondent : PP, ASSAM,

Linked Case : Crl.A./264/2026

HAFIJUR RAHMAN @ HAFIZUR RAHMAN
S/O. ASARUDDIN TALUKDAR
R/O. PARARCHAR PART-III
P/S ABHAYAPURI
DISTRICT BONGAIGAON
ASSAM

VERSUS

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

2:PADU TUDU
S/O. LATE LATHRO TUDU
R/O. HATUGAR (F.V)
JALESHWARI
P.S. GOSSAIGAON
DISTRICT KOKRAJHAR
ASSAM

Advocate for : MR. I U CHOWDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE

HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

16-11-2026

Heard Mr. H. R. A. Choudhury, learned Senior Counsel assisted by Mr. I. U. Choudhury, learned counsel for the applicant/appellant and Ms. S. H. Borah, learned Additional Public Prosecutor, Assam for the respondent No.1. Also heard Mr. J. Islam, learned counsel appearing for the respondent No.2/informant.

2. This is an application filed under Section 430 of the BNSS, 2023 for stay/suspension of sentence and to release the accused applicant/appellant on bail during the pendency of the connected appeal.

3. It is submitted by Mr. Choudhury, learned Senior Counsel that vide the impugned judgment dated 19.06.2026 and order dated 23.06.2026, passed by the learned Special Judge (POCSO), Kokrajhar in Special Case No. 156/2023 had convicted the accused applicant/appellant under Section 4 of the POCSO Act, read with Section 448 of the IPC and sentenced him to undergo R.I. for 10

years and to pay fine of Rs.25,000/- with default stipulation and also sentenced him to undergo R. I. for 1 year with fine of Rs.1,000/- with default stipulation wherein both the sentences will run concurrently.

4. Mr. Choudhury, learned Senior Counsel submitted that the present accuse applicant/appellant is innocent and he is not involved in the alleged offence. However, the order has been passed against him convicting him under Section 4 of the POCSO Act.

5. The basic contention of the applicant/appellant is that in the FIR itself, the victim was stated to be 19 years of age and in the statement recorded under Section 164 CrPC also the victim had deposed her age as 19 years. Further, it also reveals from the evidence of the victim as well as informant, PW-2, the father of the victim that she was 19 years of age at the relevant time of incident.

6. The PW-2, the father of the victim specifically mentioned that the victim born in the year 2003 and the alleged incident had happened in the year 2023. Thus, she was a major at the relevant time of incident. However, PW-8 had adduced his evidence, who stated to be the School Teacher, who also brought with him the Admission Register, stating that in the Admission Register her date of birth was recorded as 09.07.2006 and as per which, her age was 16 years 11 months at the time of the incident. Apart from the School Admission Register, there is no other document to prove the age of the victim. However, on the basis of the said document, the victim was considered to be a minor and accordingly, the order of conviction was passed under Section 4 of the POCSO Act.

7. Mr. Choudhury, learned Senior Counsel further submitted that in a POCSO

case, the age is a very relevant and vital point, but at the time of recording the statement of the accused applicant/appellant, under Section 313 CrPC, no question was put on the evidence of PW-8, who is the only witness to prove the age of the victim as a minor at the time of the incident. Thus, prejudice was caused to the accused applicant/appellant as the most vital and relevant point was not put to his mouth at the time of recording his statement under Section 313 CrPC. Accordingly, Mr. Choudhury submitted that the case is not established under Section 4 of the POCSO Act as the age of the victim was more than 19 years at the time of the incident.

8. It is further submitted by Mr. Choudhury, that during the entire trial period the accused applicant/appellant was on bail and never jumped over any bail condition and was regularly appearing before the learned Trial Court. Since the date of judgment and applicant/appellant is in custody and considering his conduct also, his bail prayer may be considered as there is no chance of absconding, even if he is released on bail at this stage. He further submitted that there is every chance of acquittal of the accused applicant/appellant on those relevant points as stated above and accordingly, submitted that it is a fit case wherein the bail prayer of the applicant/appellant may be allowed and the sentence imposed on him may be suspended under Section 430 BNSS.

9. Ms. Borah, learned Addl. PP raised objection and submitted that the PW-8 is the most relevant witnesses of this case wherein he specifically stated that as per the Admission Register, she was born in the year 2006 and she was admittedly a minor at the relevant time of incident. She further submitted that the School Certificate is considered to be an authenticated document for age proof and that has already been brought by PW-8, to prove the age of the victim.

10. Ms. Borah further submitted that the case was initially registered under Section 376 IPC and there are sufficient materials even to prove the case under Section 376 IPC also. She further submitted that the medical evidence also supports the ocular evidence as well as oral evidence of the victim, wherefrom it is seen that she was subjected to penetrative sexual assault.

11. Ms. Borah accordingly raised objection and submitted that it is not at all a fit case to allowed the accused applicant/appellant to go on bail by suspending the sentence imposed on him.

12. Mr. Islam, learned counsel appearing for the respondent No.2 also raised objection and submitted that from the evidence of PW-8 as well as the documents, he brought before the Court, it reveals that the victim was a minor at the time of the incident and considering the minor age of the victim, the appellant/applicant was rightly convicted under Section 4 of the POCSO Act and there is no reason to release the accused on bail by suspending the sentence imposed on him.

13. Heard the submission made by the learned counsel for the parties and I have also perused the case record and the TCR.

14. The present interlocutory application has been filed basically on the point that there is nothing to prove the minor age of the victim to convict the accused under Section 4 of the POCSO Act. Further as per the FIR, the statement recorded under Section 164 CrPC vis-à-vis from the evidences of both the victim and informant, i.e., PW-2, it reveals that the victim was of 19 years of age at the relevant time of incident. However, during the investigation, police found that the victim was a minor at the time of incident and to prove the minor age of the victim, the PW08 has adduced his evidence bringing the School Admission

Register before the Court.

15. On the other hand, it is the case of the respondents, that at the time of the incident, the victim was a minor girl of 16 years 11 months and the prosecution has already substantiate the plea by bringing the School Admission Register and adducing the evidence of PW-8. More so, it is the case of the State respondents that the medical evidence also supports the case of the prosecution that the victim was subjected to penetrative sexual assault.

16. It is an admitted fact that in the FIR as well as in her statement recorded under Section 164 CrPC as well as the PW-2, the informant also specifically stated that the victim was of 19 years of age at the time of the incident and she was born in the year 2003 as per the father/informant (PW-2). Thus, it is seen that the victim herself as well as the informant had stated the age of the victim as 19 years. However, during the investigation only the police found that the victim was a minor, but from the evidence of the PW-8 it reveals that he was not the School Headmaster at the time of entry of the date of birth of the victim in the School Admission Register and there is no signature of the former Headmaster in the Admission Register and from the evidence of the PW-8, it also reveals that there is no supportive document on the basis of which, her date of birth was recorded in the School Admission Register. It is an admitted fact that the School Certificate can be the basis of the age proof certificate and if the said document is proved by any support evidence, it can be considered as a authenticated age proof document of the victim.

17. But here in the instant case, it is seen that though the PW-8 has adduced his evidence bringing the Admission Register, but there is no supportive documents on the basis of which the date of birth was entered in the School Admission Register and at the same time, it is also seen that PW-2, the

informant of the case had specially deposed that the victim was born in the year 2003 and in the FIR also her age was specifically mentioned as 19 years. Thus, there is a dispute in the age of the victim, which can be clarified at the time of final hearing of the appeal, but prima facie it is seen that there is a dispute in regards to the minor age of the victim and admittedly, the victim also disclosed her age as 19 years while recording her statement under Section 164 CrPC.

18. Coming to the medical evidence of the victim it is seen that there was a old tear in the hymen and as per the evidence of the Doctor, she was exposed to sexual intercourse on multiple occasions before 36 hours or previously. But as per the informant, there was only one occasion wherein the victim was subjected to penetrative sexual assault by the present accused applicant/appellant. However, it cannot be denied that as per the medical report she was exposed to sexual intercourse, though no injury was found externally or on her private parts. But the detail discussion is required on the medical evidence also, but prima facie, it is seen that there is no injury on the body or the private part of the victim and at the same time, she was also exposed to sexual intercourse on multiple occasions.

19. Coming to the issue raised by the learned counsel for the applicant in regards to the question put to the accused applicant/appellant at the time of recording his statement under Section 313 CrPC also it is seen that the most relevant question i.e., the age of the victim which was brought before the Court by PW-8, the School Teacher was not put to the accused and hence, he could not make any reply to that regard at the time of recording his statement under Section 313 CrPC.

20. But, it is the duty of the learned Trial court to bring each material circumstances appearing in the evidence against the accused

applicant/appellant distinctively and separately at the time of recording his statement under Section 313 CrPC. Further the object of the examination under Section 313 CrPC is only to enable the accused to explain all the circumstances which goes against him in the evidence of the prosecution. But here in the instant case, it is seen that though the accused appellant was charged and convicted under Section 4 of the POCSO Act, but the most relevant and the vital point of age was not put before the accused appellant at the time of recording his statement under Section 313 CrPC. The Apex Court in the case of **Aejaz Ahmed Sheikh Vs. State of Uttar Pradesh and Anrs.** reported in **2025 Live Law (SC) 456** in para 21 and 23 had observed as follows:

> "*21. Thus, the evidence of prosecution regarding the dying declaration was not put to the accused in his statement under Section 313 of CrPC. The law on this aspect is well-settled. In the case of Raj Kumar v. State (NCT of Delhi)5, this Court has summarised the law on his aspect. Paragraph 22 of the said decision reads thus:*
>
> "*22. The law consistently laid down by this Court can be summarised as under:*
>
> *22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction. 22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.*
>
> *22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.*
>
> *22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.*
>
> *22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.*
>
> *22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.*
>
> *22.7. In a given case, the case can be remanded to the trial court from the stage of*

recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

23. The incident occurred on 26th December 2008. Even assuming that omission in recording the statement of the accused is curable, the question is whether, after a lapse of more than 14 years, the case can be remanded to the Trial Court for further examination of the accused under Section 313 of the CrPC. After such a long gap of 14 years, it will be unjust to compel the accused to face such an examination. The accused has undergone incarceration for more than 6 years. From the date of the Trial Court judgment till the date of the impugned judgment, there was a hanging sword over him of the capital punishment. Therefore, we are of the view that it will be unjust now at this stage to pass an order of remand for recording further statements under Section 313 of the CrPC. The remand at this stage will cause prejudice to the accused. Though we do not agree with some of the findings recorded by the High Court, it is not possible to find fault with the ultimate conclusion drawn by it."

21. So considering the entire discussion made above and without going other detail into the merit of the case, considering the above aspects of the case and the conduct of the accused applicant/appellant, this Court is of the opinion that the accused applicant/appellant may be released on bail and the sentence imposed upon him may be suspended, till disposal of the connected criminal appeal.

22. Accordingly, the impugned judgment dated 19.06.2026 and order dated 23.06.2026, passed by the learned Special Judge (POCSO), Kokrajhar in Special Case No. 156/2023 convicting the accused applicant/appellant under Section 4 of the POCSO Act, read with Section 448 of the IPC and sentencing him to undergo R.I. for 10 years and to pay fine of Rs.25,000/- with default stipulation and also the sentence imposed upon him to undergo R. I. for 1 year with fine of Rs.1,000/- is hereby suspended/stayed and the applicant/appellant, namely,

Hafijur Rahman @ Hafizur Rahman is allowed to go on bail on furnishing a bail bond of Rs. 50,000/- (Rupees Fifty Thousand) only with one surety of the like amount to the satisfaction of the learned Special Judge (POCSO), Kokrajhar.

23. With the above observation and direction, this interlocutory application stands allowed and disposed of.

JUDGE

Comparing Assistant