GAHC010186712025

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

Case No. : I.A.(Crl.)/936/2025

DIDARUL ISLAM AND ANR.
S/O. KUTUB UDDIN
VILL.- TARANIPUR
P/S. KATIGORAH
DIST. CACHAR
ASSAM
PIN-788805.

2: BAHAR UDDIN BARBHUIYA @ BAHAR UDDIN
S/O. LT. FARUK UDDIN
R/O. VILL.- GOBINDAPUR
P/S. KATIGORAH
DIST. CACHAR
ASSAM
PIN-788101
VERSUS

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

2:PIJUSH DAS
S/O. LT. BRAJENDRA DAS
R/O. VILL.- NAZATPUR
P/S. KATIGORAH
DIST. CACHAR
ASSAM
PIN-788805.

Advocate for : MR. A ISLAM
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HON'BLE MRS. JUSTICE SHAMIMA JAHAN
ORDER

07.10.2026

Heard Mr L R Mazumdar, learned counsel for the applicant. Also heard Mr R J Baruah, learned Additional Public Prosecutor for the State of Assam and Mr N Mahajan, learned *Amicus Curiae* for the informant.

2. By this application filed under Section 430 of the BNSS, 2023, the petitioner has prayed for suspension of sentence imposed upon him vide Judgment and Order dated 17.07.2025, passed by the learned Special Judge (POCSO), Cachar, Silchar, in Special (POCSO) Case No. 203/2024, by which the applicant was convicted under Section 354/506/34 of the IPC, read with Section 8 of the POCSO Act and was sentenced to undergo RI for a period of 6 months with fine and default stipulation, under Sections 506/341 IPC as well as to undergo RI for 5 years with fine and default stipulation under Section 8 of the POCSO Act.

3. The learned counsel for the applicant submits that the statement of the victim before the three authorities, i.e., Police, Magistrate and the Trial Court, are not consistent with each other and since the victim cannot be termed as a sterling witness corroboration has to be sought for and there are no corroboration to the statement of the victim. He submits that before the Police, the victim stated that she and the driver and the driver's friend were inside the auto and the driver and his friend tried to outrage her modesty and that the

passenger had pulled her hand, and when she raised hue and cry, the driver slowed down the auto and she was driven out from the same. During her examination before the Magistrate, she stated that the friend of the driver of the auto came and sat near and touched her arms of her right hand after asking her where she was going and she further stated that the friend of the driver tried to touch her private parts, which did not find mention in her statement recorded under Section 161 CrPC. He, thereafter, placed the statement of the victim before the Court, wherein, she stated that the passenger touched her body inappropriately and when she asked the driver to stop the vehicle, the driver stopped the vehicle and that the driver came near her and the passenger went to the driver's seat. She, thereafter, stated that the driver started touching her inappropriately, in her thighs and other parts of the body, and thereafter, she was thrown out of the autorickshaw. He as such, submits that there are vast discrepancies in the statements of the victim and on that ground, the applicant be released on bail.

4. Mr R J Baruah, learned Additional Public Prosecutor, on the other hand, submits that as far as the root of the case is concerned, there is consistency in the statement of the victim.

5. Mr N Mahajan, learned *Amicus Curiae,* appearing for the informant, supported the version of the learned Additional Public Prosecutor and submits that there are no major contradictions in the statements of the victim.

6. I have heard the learned counsels and it is noticed that some contradictions are there in the statement of the victim and since it is a settled position of law that the convicted appellant/applicant should be released on bail, if the period of incarceration is for a fixed

term and also if no exceptional circumstances are shown. This Court, on notice of the same, deems it fit to suspend the operation of the sentence imposed upon the petitioner during the pendency of the appeal. As such, the operation of the Judgment and Order dated 17.07.2025, passed by the Special Judge (POCSO), Cachar, Silchar, in Special (POCSO) Case No. 203 of 2024, is suspended during the pendency of the appeal. Consequently, the applicant be enlarged on bail on furnishing of a bail bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of Special Judge (POCSO), Cachar, Silchar.

7. Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant