GAHC030006902026

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

Case No. : I.A.(Crl.)/55/2026

Sh. Lalenkawla
S/o Hmingthanzuala, R/o Chawngtui East,Mission Veng, Champhai District,
Mizoram-796320

VERSUS

The State of Mizoram and Anr.
Aizawl2:Smt. Ngurzami
D/o Rongenga(L) R/o Vaphai
Hmunsam Veng(Thasiama Section)Champhai District
Mizoram-79632

Advocate for the Petitioner : Mr. T Lalnunsiama

Advocate for the Respondent : P.P./Addl.PP, Mizoram

In **Crl.A./32/2026**

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Advocate for the Petitioner : Mr. T Lalnunsiama
Advocate for the Respondent : P.P./Addl.PP
Mizoram

BEFORE
HONOURABLE MRS. JUSTICE HELEN DAWNGLIANI
ORDER

13.10.2026

Heard Mr. T. Lalnunsiama, learned counsel for the applicant. Also heard Mrs. Vanneihsiamia, learned Addl. Public Prosecutor for the State.

2. The application is filed under Section 430 of BNSS, 2023 for suspension of execution of the sentence and to release the applicant on bail during the pendency of the connected criminal appeal i.e., Criminal Appeal No. 32/2026.

3. The brief facts of the case is that on 31.12.2025, a written FIR was submitted by the respondent No. 2 stating that at about 6:00 to 7:00 PM, her grand-daughter was raped and seriously assaulted by the instant applicant inside his vehicle at Vaphai, Farkawn Road and thus, requested to take necessary action. Accordingly, Dungtlang P.S. Case No. 37/2025 dated 31.12.2025 under Section 4 of

the POCSO Act read with Section 64(2) of BNS was registered and investigated into.

4. Upon completion of investigation, a prima facie case was found against the instant applicant for the offence under Section 4 of POCSO Act read with section 64(1) of BNS. Charge-sheet was submitted and charge was framed against the accused/applicant for the aforesaid sections and ultimately trial was conducted which culminated in the passing of the impugned judgment and order dated 22.07.2026, by which the applicant was convicted for the offence punishable under Section 4(1) of the POCSO Act and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/- and in default, to further undergo simple imprisonment for 3 months.

5. Being aggrieved, the applicant has preferred an appeal challenging the conviction order, which is registered as Criminal Appeal No. 32/2026.

6. By the instant application, a prayer has been made to suspend the sentence and to enlarge the applicant on bail during the pendency of the instant connected criminal appeal.

7. I have heard the learned counsels.

8. Mr. T. Lalnunsiama, learned counsel for the applicant submitted that the judgment and order, which is assailed in the connected appeal has been challenged

mainly on the ground that the same was based on the sole testimony of the victim which is not reliable and without considering the other materials and evidences which are sufficient to discredit the prosecution story. It was also submitted by the learned counsel that there are serious doubts regarding the learned Trial Court invoking the presumption clause under Section 29 of the POCSO Act in the given facts of the case. The learned counsel has also submitted that there are material contradictions in the prosecution evidence, the medical evidence is not conclusive and does not show that the victim has sustained any injuries and there are no independent forensic evidence. It is also submitted that as per the Birth Certificate, the age of the victim was about 16 years old and the Birth Certificate shows that she was born on 22.8.2009 and the date of the alleged incident occurred on the evening of 30.12.2025. So at the time of the alleged incident, the victim was about 16 years of age.

9. The learned counsel also submitted that the applicant has no criminal antecedents and he is in the Army with good service record and because of the instant conviction, he has been placed under suspension for which departmental inquiry is being initiated. The learned counsel also submitted that the applicant has no criminal antecedents and considering the status of the applicant, the manner in which the offence is alleged to have been committed, the applicant would suffer irreparable prejudice if the sentence is not suspended at this stage and the

conviction is ultimately set aside at the final hearing of the of the main appeal. The learned counsel has placed on record the decision of the coordinate Bench of this Court vide order dated 15.12.2022 in Bail Application No. 23 of 2022, wherein, a case of conviction under the POCSO Act, the sentence was suspended and the applicant enlarged on bail during the pendency of the appeal.

10. On the other hand, Mrs. Vanneihsiami, learned Addl. P.P. opposed the application by submitting that at this juncture we are not to consider the merit of the appeal and as the record of the learned Trial Court is yet to be received, the materials cannot be fully appreciated at this stage. The learned Addl. P.P. submitted that at this stage, this Court will have to see whether reasonable grounds have been made out to suspend the sentence and enlarge the accused on bail, the Court will have to consider the seriousness of the offence for which the accused was convicted and the Court will have to examine whether there is urgency in granting bail/suspension of sentence. The learned Addl. P.P. has submitted that there is no clear statement regarding the urgency of releasing the accused on bail at this stage and has further suggested that the matter can be expedited for hearing instead of the applicant being released on bail. The learned Addl. P.P. also submitted that the presumption as pointed out by the learned counsel for the applicant cannot be raised at the appellate stage.

11. The learned Addl. P.P. therefore submitted that no reasonable ground has

been made out to enlarge the accused on bail at this stage and for this, reliance has been placed on the decision of the Supreme Court in the case of **Jamnalal Vs. State of Rajasthan,** reported in **2025 SCC OnLine 1641** wherein, the Hon'ble Supreme Court has quoted the observation of the same court in **Vijay Kumar Vs, Narendra** in which, it was observed that for consideration of suspension of sentence or bail at the appellate stage especially in cases involving serious offences like murder, the court should consider relevant factors like the nature of accusation, the manner in which the crime is alleged to have been committed, the gravity of the offence and the desirability of releasing the accused on bail and that as indicated in the judgment itself, the aforementioned observation was applicable to the POCSO offences also.

12. I have perused the application as well as considered the rivals submissions made by the parties.

13. It is true that at this stage, this Court is not to consider the merit of the case but, to see whether prima facie materials exist to suspend the sentence and thereby, release the accused on bail.

14. I have perused the application alongwith the annexures and have considered the submissions made by the parties. It is a settled position that at this stage, this Court cannot go into the minute details regarding the merit of the judgment and

conviction order which would be appreciated in the main criminal appeal. It is an admitted position that the applicant herein was serving in the Army prior to the conviction and it is also an admitted position that he did not have any criminal antecedents prior to the instant conviction. There is also nothing to suggest that the victim is unable to continue normal life after the incident or that she has suffered injury. I have also considered the age of the accused, who is about 30 years.

15. Considering the stage of the instant case, the status of the accused as well as that of the victim, the manner in which the offence was committed, and on overall consideration of the record, this Court is of the view that reasonable ground has been made out to suspend the sentence and enlarge the accused on bail.

16. Accordingly, the sentence passed in the judgment and order dated 22.7.2026 in POCSO Case No. 114 of 2026/Sessions Case No. 10 of 2026 wherein, the accused/applicant was convicted for the offence under Section 4(1) shall remain suspended until further order and the applicant shall be released on bail with a bond of Rs. 1,00,000/- with one (1) reliable surety of like amount to the satisfaction of the learned Trial Court with the condition that (i) he will make himself available either to the Trial Court or the Appellate Court whenever required in connection with the instant FIR (ii) he shall not misuse the liberty granted by this Order or threaten with the administration of justice.

17. With the above, the application stands disposed of.

JUDGE

Comparing Assistant