

GAHC010013732024



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

Case No. : I.A.(Crl.)/77/2024

MD. ABDUL KHALEQUE
S/O LATE ABDUL MANNAS, R/O CHATIENTOLI (WARD NP. 7), P.O.-
LAHARIGHAT, P.S.- LAHARIGHAT, DIST.- MORIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE P.P., ASSAM.

2:MUSSTT. MONOWARA KHATOON
W/O MD. JAINUDDIN

R/O CHATIENTOLI (WARD NP. 7)
P.O.- LAHARIGHAT
P.S.- LAHARIGHAT
DIST.- MORIGAON
ASSAM
PIN- 782127.

3:JASMINA KHATOON
D/O MD. JAINUDDIN

REP. BY HER MOTHER MUSSTT. MONOWARA KHATOON

R/O CHATIENTOLI (WARD NP. 7)
P.O.- LAHARIGHAT
P.S.- LAHARIGHAT
DIST.- MORIGAON
ASSAM
PIN- 782127

Advocate for the Petitioner : MR. D C C PHUKAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

06.05.2024

(Suman Shyam, J)

Heard Mr. D.C.C. Phukan, learned counsel for the applicant/ appellant. Also heard Ms. S. H. Bora, learned Addl. P.P., Assam appearing for the State. Mr. J. C. Borah, learned counsel is present on behalf of the respondent Nos.2 and 3. By the judgment dated 08.12.2023 passed by the learned Additional Sessions Judge –cum- Special Judge (POCSO), Morigaon in POCSO Case No.58/2020, the applicant herein was convicted under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.10,000/- with default stipulation. Being aggrieved by the impugned judgment dated 08.12.2023 the applicant as appellant has preferred Criminal Appeal No.22/2024 which is pending disposal before this Court. The applicant/ appellant is in jail.

By filing the instant I.A. the applicant is seeking suspension of his jail sentence and also for his release on bail.

By referring to the materials on record, Mr. Phukan, learned counsel for the applicant/appellant, has argued that there is material discrepancy in the version of the victim girl as recorded under Section 164 Cr.P.C. as well as her deposition recorded by the Court and the other witnesses have also not supported the version of the victim. In support of his aforesaid argument, the

applicant's counsel has taken us through the materials available on record including the statement/testimony of the victim girl as well as the deposition of PW-3. It is also the submission of Mr. Phukan that although the victim has stated about insertion of finger in her lower part, but later on, the prosecution case has changed to rape having been committed on the victim, thus, raising a serious doubt on the veracity of the prosecution story. Contending that the prosecution story is entirely concocted and have been brought forward only to extract undue benefit from his client Mr. Phukan has prayed for suspension of jail sentence of the applicant and releasing him on bail during the pendency of the appeal.

Opposing the said prayer, Ms. Bora, learned Addl. P.P. has argued that there is total consistency not only in the version of the victim but the prosecution story has also been duly corroborated by the other prosecution witnesses. Therefore, submits Mr. Bora, the learned Court below has rightly convicted the applicant/appellant. Under the circumstances, submits the learned Addl. P.P., there is no scope for releasing the applicant/appellant on bail.

Mr. J. C. Borah, learned counsel for the respondent Nos.2 and 3 has supported the arguments of the learned Addl. P.P.

We have considered the submissions made at the Bar and have also gone through the materials available on record.

After examining the statements of the victim, who was aged about 10 years on the date of the occurrence, we find that there is substantial consistency in her statement recorded under Section 164 Cr.P.C. as well as the version recorded before the Court. That apart, it also *prima facie* appears that the prosecution story has been duly supported by the other witnesses examined by the

prosecution. Minor discrepancies, if any, can only be examined during the course of final hearing of the appeal so as to ascertain as to whether, the same will have any material bearing in the outcome of the appeal. However, such an exercise will be unwarranted at this stage, while considering the bail prayer.

The alternative submission of Mr. Phukan is that it is not a case of rape but insertion of finger in the private parts (vagina) of the victim. Even if the said argument of the applicant's counsel is accepted, even then, we are of the *prima facie* opinion that the same would also constitute an offence under Section 3(b) of the POCSO Act and therefore, would attract punishment under Section 4 of the said Act. Since the appeal preferred by the applicant is pending disposal on merit, we refrain from making any further observation in this regard.

Having regard to the facts and circumstances of the case and in view of the discussions made herein above, we are of the considered view that this is not a fit case for releasing the applicant on bail. Therefore, this bail application stands rejected.

We, however, make it clear that our observations made herein above are only for the limited purpose of disposing of this I.A. and the same shall not have any bearing at the stage of final hearing of the appeal.

I.A. stands disposed of.

JUDGE

JUDGE

Comparing Assistant