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

Case No. : I.A.(Crl.)/75/2026

MD MAINUL ISLAM ALIAS MUN
S/O MD. KHASNUR ALI, R/O VILL. MANAKUCHI, P.S. HAJO, KAMRUP

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

2:SUSMITA BARMAN
D/O SRI HIRANYA BARMAN
R/O KOCHTALA
P.S. HAJO
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, MS. S B CHOUDHURY, MD. K ALI

Advocate for the Respondent : PP, ASSAM,

Linked Case : Crl.A./25/2026

MD MAINUL ISLAM ALIAS MUN
S/O MD. KHASNUR ALI
R/O VILL. MANAKHUCHI
P.S. HAJO
KAMRUP

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THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP
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DIST. KAMRUP
ASSAM.

Advocate for : MR H R A CHOUDHURY

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date - 25.05.2026

- 1.** Heard Mr. H. R. A. Choudhury, the learned senior counsel assisted by Ms. S. B. Choudhury, the learned counsel for the applicant. Also heard Mr. K. Baishya, the learned Additional Public Prosecutor for the State respondent as well as Mr. M. Smith, the learned counsel for the respondent No.2.
- 2.** This application under Section 430 of the BNSS, 2023 has been filed by the Md. Mainul Islam Alias Mun in connection with Criminal Appeal No. 25/2026, praying for suspension of sentence imposed on the present applicant during the pendency on the connected appeal.
- 3.** The facts relevant for consideration of the instant interlocutory application, in brief, are that the victim girl on 26.12.2010 had

lodged an FIR before the Officer-in-Charge of Hajo Police Station, *inter-alia*, alleging that the present applicant has subjected her to sexual intercourse on several occasions without her consent. It was also alleged in the FIR that on 15.09.2010, the applicant took the victim girl to his residence on a promise to marry her and indulge in sexual intercourse with her without her consent. It is further alleged that thereafter, the applicant made a video recording of the sexual act without the knowledge of the victim girl and later on, threatened her that he would tarnish her image by publishing the obscene video.

4. On the basis of the aforesaid FIR, Hajo P. S. No. 237/2010 was registered under Section 417/376/294/506 of the Indian Penal Code read with Section 67A of the Information Technology Act and investigation was initiated. After completion of investigation charge sheet was laid against the present applicant under Section 417/376 of the Indian Penal Code.
5. Later on, the applicant appeared before the Trial Court and charges were framed under Sections 417/376/506 of the Indian Penal Code to which he refused to plead guilty and claimed to be tried.
6. During trial, the prosecution side adduced evidence of five witnesses including the victim girl. The present applicant was examined under Section 313 of the Code of Criminal Procedure, 1973, during which he denied the truthfulness of the testimony of the prosecution witnesses. However, he did not adduce any evidence in defense.

- 7.** Ultimately, by the judgment, which has been impugned in the connected appeal, the present applicant was convicted under Sections 376/506 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs.10,000/- under Section 376 of the Indian Penal Code and in default of payment of fine, he was sentenced to further undergo simple imprisonment for 6 months and the applicant was also imposed a sentence of payment of fine Rs.1,000/- under Section 506 of the Indian Penal Code and in default, to undergo simple imprisonment for 2 months.
- 8.** Mr. H. R. A. Choudhury, the learned senior counsel for the applicant has submitted that applicant/appellant is languishing behind the bars since 15.11.2025. He submits that there is every possibility that in the connected appeal, the applicant may get a verdict of acquittal and therefore, he submits that if during the pendency of the connected appeal, the applicant is kept behind the bars he would be highly prejudiced.
- 9.** The learned senior counsel for the applicant submits that the conviction of the present applicant was mainly on the basis of sole testimony of the prosecutrix. He, however, submits that the prosecutrix/victim cannot be regarded as a sterling witness, as she has given contradictory statement during her cross-examination from what she has stated in the FIR. He submits that though in the FIR, it was alleged by the victim that present applicant had subjected her to sexual intercourse with a promise to marry her,

however, during cross-examination, she has categorically deposed that the accused never promised to marry her.

- 10.** He further submits that from the testimony of the victim girl during her cross-examination, it becomes clear that she was a consenting party to the sexual intercourse with the applicant. He further submits that the victim girl has clearly stated that she has not seen the alleged obscene video of her made by the present applicant, neither she has met any person who has seen those video. Therefore, he submits that the allegation of making obscene video by the applicant is without any basis.
- 11.** He, therefore, submits that since the testimony of the victim girl is the only basis of the conviction of the present applicant and since, she has deposed differently from what has been stated by her in the FIR, there is every likelihood that the appeal filed by the present applicant may be allowed and, as such, he prays for suspending the sentence imposed on the applicant during the pendency of the connected appeal.
- 12.** On the other hand, Mr. K. Baishya, the learned Additional Public Prosecutor has vehemently opposed the prayer for suspension of sentence on the applicant at this stage. He submits that though, there may be slight discrepancy in the testimony of the victim girl, however, it is clearly stated by her in her testimony that her house was vandalized by some persons for the incident, which is involved in this case and for which, she was not mentally stable at that point of time. He further submits that though, there appears to be a relationship between the victim girl and applicant at the initial

stage, however, he submits that in her deposition, the victim girl has never admitted that she consented to the sexual intercourse with the present applicant, rather she has categorically deposed that she never consented to the sexual intercourse by the applicant.

- 13.** He submits that there is clear evidence on record that once the victim girl was subjected to sexual intercourse she started avoiding the applicant, however, he continued to stalk her and threatened her that he would make the obscene video of the victim girl viral. He also points out that the victim girl was even called by some unknown persons informing her about doing the viral video of her.
- 14.** Under such circumstances, he submits that there is unlikelihood of the appeal filed by the present applicant would result into a verdict in his favour. He further submits that since the connected appeal is already fixed for hearing, the instant interlocutory application may be dismissed and the instant appeal may be heard on merit.
- 15.** On the other hand, Mr. M. Smith, the learned counsel for the victim girl, has submitted that he adopts the submissions made by the learned Additional Public Prosecutor and opposes the suspension of the sentence imposed on the applicant at this stage. He also submits that on the perusal of the evidence available on record, it is clear that when the victim girl was first subjected to sexual intercourse, she was a minor girl of 16 years of age, and therefore, the conviction of the appellant/applicant ought to have been under more stringent Act like POCSO Act.

- 16.** I have considered the submissions made by the learned counsel for both sides and I have also gone through the materials available on record.
- 17.** The learned senior counsel for the applicant has pointed out the discrepancies in the testimony of the victim girl during her cross-examination. However, this Court is not inclined to give its opinion on the same at this stage as it may have a bearing on the final outcome of the connected appeal.
- 18.** However, even after going through the cross-examination of the victim girl at this stage, it cannot be said that in any manner she has stated that she had consented to sexual intercourse with the present applicant. Since, the Trial Court after going through the evidence on record has convicted the applicant and has imposed the sentence, which he is presently serving out and since the said finding of the trial court is impugned in the connected appeal, this Court is not inclined to give its opinion regarding the merit of the respective cases of the either parties. However, as at this stage, it cannot be said that the impugned judgment has been passed without any basis or that it is based on evidence of witnesses whose testimonies are wholly unreliable, this Court is not inclined to suspend the sentence imposed on the applicant/appellant at this stage. More so, when the offence involved in this case is of grave nature.
- 19.** This interlocutory application, is accordingly, dismissed.

- 20.** It is however, made clear that observations made in the instant order shall not have any bearing in the pending appeal filed by the present applicant and same shall be considered on its own merit.

JUDGE

Comparing Assistant