

GAHC010023272025



2026:GAU-AS:2004

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

Case No. : I.A.(Crl.)/114/2025

RAJU MODAK
S/O LATE GOPAL MODAK, RESIDENT OF CHOTOGUMA, PS GOLAKGANJ,
DIST DHUBRI ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP ASSAM

2:SANKAR KALITA
S/O LATE HEMEN KALITA

RESIDENT OF VILAGE SUNDARISAL
PS KAMALPUR
DIST. KAMRUP
ASSAM 78138

Advocate for the Petitioner : ABU TALEB SARKAR, AMINUR RAHMAN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN**

ORDER

12.02.2026

Heard Mr. HRA Choudhury, learned Senior Counsel assisted by Mr. A.T. Sarkar, learned counsel for the applicant. Also heard Mr. M.P. Goswami, learned Addl. Public Prosecutor for the State and Mr. R. Borah, learned counsel for the informant.

2. This is an application filed under Section 430 of the BNSS, 2023 for suspension of the sentence and subsequent bail in connection with the Judgment & Order dated 23.12.2024 passed by the learned Additional Sessions Judge (FTC), Rangia, Kamrup (Assam) in Sessions Case No. 9/2018. The applicant, by the said Judgment & Order was convicted under Section 376 of the IPC and was sentenced to undergo Rigorous Imprisonment for 10 (ten) years with fine and default stipulation.

3. Mr. HRA Choudhury, learned Senior Counsel for the applicant submits that the victim was deaf and dumb and that her statement was taken as PW-2 and her signs and gestures were interpreted by PW-3, who is a distant relative of the victim. He submits that it is a settled position of law and moreso, under Section 119 of the Evidence Act, which has been interpreted by the Hon'ble Supreme Court to the effect that a person who has an interest in the case should not be the interpreter of a deaf and dumb witness. He submits that a deaf and dumb witness, if he is able to read and write should be given questions, who should give reply to the same and in case the deaf and dumb witness is not able to read and write, her signs and gestures should be

interpreted by an interpreter or an educator, which cannot be a relative of the victim or a person who has interest in the case. He submits that PW-3 is the distant relative of the victim, who met the victim after the occurrence and who was apprised of by the victim about the incident and who had finally deposed before the Trial Court about the incident. He submits that PW-3 is interested in the case and as such, she cannot be the interpreter of PW-2. On that count only and on other grounds, Mr. HRA Choudhury, learned Senior Counsel prays for suspension of sentence and resultant bail.

4. Mr. M.P. Goswami, learned Addl. Public Prosecutor for the State submits that there are evidence on record, moreso, in the statement of PW-3, who had met the victim after the occurrence that the applicant had raped the victim and as such, he submits that no suspension of sentence or subsequent bail may be granted. He has also relied on the findings of the Medical Doctor to that effect.

5. Mr. R. Borah, learned counsel for the informant submits on the merit of the case and states that there is enough evidence to bring home the guilt of the applicant as he is the perpetrator of the offence in question.

6. I have heard the learned counsels for the parties and have gone through the records.

7. It is held by the Hon'ble Supreme Court in the case of ***State of Rajasthan Vs. Darshan Singh***, reported in ***AIR 2012 SC 1973***, which is placed by Mr. H.R.A. Choudhury, learned Senior Counsel that in case the witness is not able to read and write, his statement can be recorded in sign language with the aid of an interpreter, if found necessary and in case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case.

8. In the instant case, it is seen that PW-3 had deposed before the Court that she met the victim after the occurrence, who had by sign language told her that she was being raped by the applicant and the said witness had deposed before the Trial Court. It is also seen that the said witness had interpreted the signs and gestures of PW-2 when the victim deposed before the Trial Court. She is not only stated to be a distant relative, but also seems to have interest in the case, since she deposed as the prosecution witness supporting the case of the prosecution and stating what the victim had stated before her after the occurrence.

9. The learned Trial Court had not gone into the said aspect of the matter to the extent required. As there is violation of the order of the Hon'ble Supreme Court and moreso, for the fact that the petitioner had been inside the jail for almost 2 (two) years during his total incarceration period of 10 (ten) years, this Court deems it fit that the sentence imposed upon the applicant, vide Judgment & Order dated 23.12.2024 be suspended during the pendency of the appeal and be released on bail on furnishing of a bail bond of Rs. 30,000/- with two local sureties of like amount to the satisfaction of the learned Additional Sessions Judge (FTC), Rangia, Kamrup (Assam) in Sessions Case No. 9/2018.

10. The Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant