

GAHC010030342026



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

**Case No. : I.A.(Crl.)/147/2026**

ANIL KALITA  
S/O LATE BHABIN KALITA  
R/O VILL. AZARA  
P.S. KAMALPUR  
DIST. KAMRUP  
ASSAM.

VERSUS

THE STATE OF ASSAM AND NAR  
REP BY THE PP  
ASSAM

2:SMTI PUTUL DAS

W/O LATE GHANASHYAM DAS  
R/O VILL. AZARA  
P.S. KAMALPUR  
DIST. KAMRUP  
ASSAM.

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Advocate for : MR. A AHMED  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM AND NAR

**BEFORE**  
**HONOURABLE MR. JUSTICE PRANJAL DAS**

**ORDER**

**30.03.2026**

Heard Mr. A. Ahmed, learned counsel for the applicant. Also heard Mr. B.

Sarma, learned APP for the State and Mr. A. Phukan, learned Amicus Curiae for the informant.

2. This instant interlocutory application has been filed under Section 430 of the BNSS, 2023, seeking suspension of sentence and release of the applicant on bail in connection with the judgment and order dated 29.01.2026, passed by the learned Additional Sessions Judge-cum-Special Judge, POCSO, Rangia in Special (POCSO) Case No. 1 of 2019, whereby the applicant/appellant was convicted under Section 8 of the POCSO Act and sentenced to undergo rigorous imprisonment for 4 (four) years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo simple imprisonment for 1 (one) month.

3. Mr. Ahmed, learned counsel for the applicant, submits that, inclusive of the period of detention undergone during investigation and trial, the applicant has already spent more than 6 (six) months in custody. It is submitted that, considering the nature and duration of the sentence, i.e., 4 (four) years, the applicant may be granted bail by suspending the sentence.

4. It is further submitted that there are certain infirmities in the impugned judgment, particularly with regard to the appreciation of evidence, including the defence evidence. In support of his contentions, the learned counsel for the applicant relies upon the decisions - *Johirul Islam @ Jaher Ali vs. The State of Assam and Anr. and Javed Ali in the Case No. Crl.A./332/2022 dated on 14.12.2022*, *Bhagwan Rama Shinde Gosai and Ors. vs. State of Gujarat* reported in (1999) 4 SCC 421, *Kiran Kumar vs. State of M.P.* reported in 2001 AIR SCW 5130 and *Aasif Alias Pasha vs. State of U.P.* reported in AIR Online 2025 SC 721.

5. The principal proposition emerging from the aforesaid decisions with regard to suspension of sentence is that, in cases involving a fixed-term sentence, the appellate court may consider suspension of sentence liberally, unless there exist

strong or exceptional circumstances to the contrary.

6. In this regard, reliance has been placed on the decision in *Suresh Kumar (supra)*, wherein reference has been made to the judgment of the Hon'ble Supreme Court in *Bhagwan Rama Shinde Gosai vs. State of Gujarat*, reported in (1999) 4 SCC 421, wherein it has been held that when a convicted person is sentenced to a fixed term of imprisonment and prefers an appeal as a matter of statutory right, the appellate court may consider suspension of sentence liberally, unless exceptional circumstances exist.

7. The learned Additional Public Prosecutor, on the other hand, submits that the sentence ought not to be suspended at this stage. It is contended that the evidence on record clearly implicates the applicant/appellant, on the basis of which he has been convicted. It is further submitted that the prosecutrix, both in her deposition during trial as well as in her statement recorded before the Magistrate, has consistently implicated the applicant/appellant. According to the learned Additional Public Prosecutor, no special or exceptional circumstances have been made out in the present case warranting suspension of sentence.

8. Mr. Phukan, learned Amicus Curiae appearing for the informant, also supports the submissions advanced by the prosecution. He submits that the victim was only about 13 years of age at the time of the incident and that her mother is a widow. It is further contended that there are no infirmities in the testimony of the prosecutrix and that, as per the settled law laid down by the Hon'ble Supreme Court, a conviction can be based on the sole testimony of the prosecutrix, if found to be cogent and reliable.

9. In support of his submissions, reliance has been placed on *State of U.P. vs. Chhotey Lal* reported in (2011) 2 SCC 550, *Ajagar Ali vs. State of West Bengal* reported in (2013) 10 SCC 31,

*State of Mizoram vs. Lalram Liana* reported in (2024) SCC OnLine Gau 403 and *State of Rajasthan vs. Srichand*, Criminal Appeal No. 561 of 2009, decided on 11.05.2015. Referring to the said decisions, it is contended that there is no legal bar in basing a conviction solely on the testimony of the prosecutrix, and in the present case, the said testimony is consistent and trustworthy.

10. I have considered the submissions advanced on behalf of the parties and have perused the relevant materials on record. The sentence imposed in the present case is a fixed-term sentence of 4 (four) years' rigorous imprisonment. The general principle laid down by the Hon'ble Supreme Court is that, in cases involving fixed-term sentences, suspension of sentence pending disposal of the appeal may be considered liberally.

11. However, at the same time, this Court takes note of certain relevant circumstances. The accused was about 31 years of age at the time of the incident, whereas the victim was approximately 13 years old. Upon perusal of the testimony of the victim, it emerges that she is being brought up by her widowed mother, who is working as a daily wage labourer. The statement of the victim recorded before the learned JMFC during the course of investigation has also been perused. At this stage, however, this Court refrains from making any detailed observations on the merits of the evidence so as to avoid causing any prejudice to the pending appeal.

12. It is also noted that the applicant has started undergoing the sentence only from 29.01.2026, i.e., the date on which the impugned judgment and order of sentence was passed.

13. Considering the totality of the facts and circumstances, particularly the age of the victim and the vulnerable socio-economic condition of the victim and her widowed mother, this Court is of the view that, despite the fixed nature of the sentence and the legal principles governing suspension of sentence, no case is

made out for grant of such relief at this stage.

14. Accordingly, the instant interlocutory application seeking suspension of sentence and grant of bail stands rejected at this stage.

**JUDGE**

**Comparing Assistant**