

GAHC010035732025



undefined

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

Case No. : I.A.(Crl.)/1/2026
in
Crl.A./1/2026

SRI MOHAN DOLEY
S/O - LT. TONGARAM DOLEY R/O - NO. 2 LAKHI PATHAR MISSING GAON
PO - LAKHI PATHAR PS - DHEMAJI
DIST - DHEMAJI
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP
ASSAM

2:SMTI JUGAMAI BORA
W/O - SANATAN BORAH
R/O - VILL. NO 2 LAKHI PATHAR MISSING GAON

P.O. - LAKHI PATHAR
PS - DHEMAJI

DIST - DHEMAJI
ASSAM

Advocate for : BIKASH KUMAR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

31-08-2026

Heard Mr. U. Dutta, learned counsel for the applicant/appellant and Mr. K. Das, learned Additional Public Prosecutor, Assam for the respondent No.1. Also heard Mr. S. Pegu, learned counsel for the respondent No.2.

2. This application has been filed under Section 430 of the BNSS, 2023, corresponding to Section 389 CrPC praying for suspension of the sentence dated 07.12.2024, passed by the learned Special Judge (POCSO), Dhemaji in Special (POCSO) Case No. 27/2018 convicting and sentencing the applicant/appellant to undergo R.I. for 5 (five) years and to pay fine of Rs. 10,000/- for committing the offence under Section 354 IPC, in default of payment, to undergo R. I. for another 4 (four) months.

3. It is submitted by Mr. Dutta, learned counsel that the present applicant/appellant is in custody from the date of the judgment and till date, he is in custody for more than 1 year 8 months and 20 days and since the date of arrest, he is behind the bar for more than 2 years. He further submitted that basically the case is of 354 IPC, wherein the accused was sentenced with maximum punishment of 5 years.

4. Mr. Dutta, further submitted that though initially it was stated that the victim is of 12 years, but the prosecution could not prove the age of the victim and considering the medical report, the learned Trial Court had passed the order of conviction under Section 354 IPC.

5. He further submitted that there is no eye witness to the prosecution case

and the conviction is based only on the evidence of PW.1, the victim of the case. The medical evidence also does not support the case of the prosecution and at the time of examination, the doctor also did not find any abrasion mark on the body of the victim, though it is alleged that a scuffle took place between the accused and the victim. That apart, all the witnesses narrated the same story without any kind of contradictions, which also create a reasonable doubt in the veracity of the prosecution case. However, he submitted that the accused is a permanent resident of his addressed locality and hence, there is no chance of absconding, if the applicant/appellant is granted with the privilege of bail.

6. Mr. Das, learned APP raised objection and submitted that that victim was stated to be 12 years of age in the FIR as well as her statement recorded under Section 164 CrPC and the mother of the victim also stated her age to be 12 years. But only considering the medical report, wherein the victim was stated to be 15-17 years of age, the learned Trial Court had taken into consideration variation of 2 years and the benefit was extended to the accused considering the victim girl as a major one.

7. However, he submitted that the victim is consistent in her statement recorded under Sections 161 and 164 CrPC vis-à-vis while adducing her evidence in the Court. The mother of the victim also corroborates the statement of the victim and there is nothing to disbelieve, specially, PW- 1 and PW- 2 on the basis of which the conviction was passed. Mr. Das, accordingly raised vehement objection and submitted that it may not be a fit case to grant bail to the applicant/appellant at this stage.

8. Mr. Pegu, learned counsel appearing for the respondent No. 2 submitted that the FIR was lodged only due to misunderstanding and hence, the victim as well as the informant had no objection, if the applicant/appellant is allowed to

go on bail.

9. Considering the entire submissions and entire circumstances of the case, vis-à-vis the period of detention already undergone by the applicant/appellant and other circumstances of this case, specially the submissions made by the learned counsel for the respondent No2, this Court is of the opinion that bail can be granted to the applicant/appellant.

10. Accordingly, the judgment and order dated 07.12.2024, passed by the learned Special Judge (POCSO), Dhemaji in Special (POCSO) Case No. 27/2018 convicting and sentencing the applicant/appellant to undergo R.I. for 5 (five) years and to pay fined of Rs. 10,000/- for committing the offence under Section 354 IPC, in default of payment, to undergo R. I. for another 4 (four) months is hereby suspended/stayed and the applicant/appellant, namely, **Sri Mohan Doley** is allowed to go on bail on furnishing a bail bond of Rs. 50,000/- (Rupees Fifty Thousand) only with one surety of the like amount to the satisfaction of the learned Special Judge (POCSO), Dhemaji.

11. With the above observation and direction, this interlocutory application stands allowed and disposed of.

JUDGE

Comparing Assistant