

GAHC010058802024



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

Case No. : I.A.(Crl.)/313/2024

MOMIRUL ISLAM @ RAJU
S/O MAHAMMAD HOSSEN @ MOHAMMAD HUSSAIN
VILL.- CHATAPARA
P.S.- BILASIPARA
DIST.- DHUBRI
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P.
ASSAM.

2:JALIL SK
S/O OMED ALI
VILL.- CHATAPARA
P.S.- BILASIPARA
DIST.- DHUBRI
ASSAM
PIN- 783330.

Advocate for : MR. A CHAUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.04.2024

[M. Choudhury, J.]

Heard Mr. D. Bora, learned counsel for the applicant-appellant and Ms. N. Das, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam.

The instant application under Section 389[1] of the Code of Criminal Procedure, 1973 is preferred by the applicant-appellant for seeking suspension of execution of the sentence passed against the applicant-appellant and for his release on bail.

The applicant-appellant has preferred the connected appeal, Criminal Appeal no.95/2024 and the said appeal has been preferred against a Judgment dated 19.02.2024 and an Order dated 22.02.2024 passed by the learned Special Judge, Bilasipara [‘the trial court’, for short] in Special [POCSO] Case No. 18/2021. By the said Judgment and Order, the accused-appellant has been convicted under Section 4[2] of the Prevention of Child from Sexual Offences [POCSO] Act, 2012 and under Section 376[3] of the Indian Penal Code [IPC]. For the offence under Section 4[2] of the POCSO Act, the accused-appellant has been sentenced to undergo rigorous imprisonment for 21 [twenty-one] years and also to pay a fine of Rs. 10,000/-, in default, to undergo simple imprisonment for another 2 [two] months. No separate sentence has, however, been passed against the accused-appellant for finding him guilty under Section 376[3] of the Indian Penal Code [IPC].

Issue notice, returnable in 4 [four] weeks.

As Ms. Das, learned Additional Public Prosecutor, Assam has appeared and accepted notice on behalf of the opposite party no. 1, State of Assam, issuance of formal notice to the opposite party no. 1 is dispensed with.

The applicant-appellant shall take steps upon the opposite party no. 2, the victim, in terms of the Notification no.17 dated 15.03.2024 and the order dated 23.06.2023 passed in Criminal Appeal [J] No.40/2022 [Deepak Nayak vs. State of Assam and 2 Ors.].

The learned Additional Public Prosecutor shall obtain service report from the

jurisdictional Police Station and place the same before this Court on the returnable date.

List the matter after 4 [four] weeks.

The prayer for suspension of execution of sentence passed against the applicant-appellant and for his release on bail will be considered on completion of service of notice upon the opposite party no. 2 and receipt of the records from the learned trial court.

JUDGE

JUDGE

Comparing Assistant