

GAHC010087392025



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

Case No. : I.A.(Crl.)/398/2025

NIZAMUDDIN BHUYAN
S/O-LATE JAHAN BOXO BHUYAN,R/O-VILL-KHUDRA NARIKOLA,P.S-
ABHAYAPURI,DIST-BONGAIGAON,ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP,ASSAM

2:MUSSTT ARJUFA BEGUM
W/O-MONSER ALI
R/O-DUMURIA PAHARTOLI
P.S-ABHAYAPURI
DIST-BONGAIGAON
ASSAM-78338

Advocate for the Petitioner : MR. N I KHAN,

Advocate for the Respondent : PP, ASSAM,

Linked Case : Crl.A./143/2025

NIZAMUDDIN BHUYAN
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ASSAM-783384

Advocate for : MR. N I KHAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

ORDER

19.09.2025

Heard Mr. Z Kamar, learned Senior Counsel for the petitioner. Also heard Mr. N Das, learned Addl. Public Prosecutor.

2. This is an application under Section 480 of the BNSS, 2023 for suspension of the sentence that was imposed by the learned Trial Court upon conviction of the applicant/appellant vide Order dated 21.03.2025 sentencing the applicant/appellant to undergo R.I for 5 years and to pay a fine of Rs. 50,000 ID, S.I for 3 months.

3. Brief facts of the prosecution is that on 07.07.2018, the

informant/respondent No. 2 lodged an ejahar before the O/C, Abhayapuri Police Station, alleging inter-alia that the applicant/appellant had been trying to sexually harass. The minor daughter of the informant since long and on 30.06.2018 at about 8:15 a.m., while she was sitting on a tempo for going to school, the applicant/appellant came and sat beside the girl and touched various parts of her body. Upon hue and cry of the girl he fled away from there.

4. I have heard Mr. Z Kamar, learned counsel appearing for the appellant who submit that the learned Trial Court failed to appreciate that the evidence of PW-3 victim is marred by serious contradictions, inasmuch as the victim had stated in her statement before the Magistrate that the applicant had touched her thigh and pressed her breast whereas in her testimony before the learned trial court, she deposed that he pressed her right breast and touched her vagina.

5. It is submitted that such contradiction undermines the credibility of the prosecution case. Further, the FIR was lodged for a long delay of 7 days without any satisfactory explanation, which fact was not taken into account by the trial court. Further there is no other corroborative evidence including any medical any evidence to support the prosecution case. In the light of the above facts, the applicant/appellant may be released on bail. On the other hand, the learned Addl. Public Prosecutor submitted that the statements of the victim before the

Police, Magistrate as well as before the trial court has been largely consistent and moreover, in the case of this nature, the evidence of the prosecutrix is sufficient to establish her guilt of the accused if it is found to be credible and trustworthy.

6. The learned Senior Counsel for the applicant had placed reliance upon the judgment of the Hon'ble Supreme Court in *Bhagwan Rama ShindeGosai&Ors. Vs. State of Gujarat*, reported in (1999) 4 SCC 421, wherein it has been held as follows:-

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavor should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence, so

as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

7. On the other hand, the learned Addl. Public Prosecutor has relied upon two very recent judgments of the Hon'ble Apex Court i.e. *Asif @ Pasha vs. State of U.P &Ors., 2025 INSC 944* and *Jamnial vs. State of Rajasthan, reported in 2025 INSC 935.*

8. In both the aforesaid two decisions rendered on 6th August, 2025, after referring to various precedents, it has been held as follows:-

“33. Bearing in mind the aforesaid principles of law, the endeavor on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive

at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

8. Having been taken through the evidence on record, this Court while undertaking exercise to ascertain where the convict has fair chances of acquittal, nothing culpable or very apparent or gross on the face of the record could be found on the basis of which the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. What the learned Senior Counsel for the applicant/appellant was pointed out appears to be minor contradictions which do not affect the root of the matter. As submitted by the learned Addl. Public Prosecutor, the story of the victim has been consistent throughout different stages of the investigation and trial, wherein her statement was recorded by the police, the Magistrate as well as by the learned trial court. The learned trial court has also explained the discrepancies in the evidence of the victim pointed out by the learned Senior Counsel for the applicant/appellant.

9. From the above, it appears that the present is not a case where the suspension of sentence is called for, considered on the touchstone of the principles laid down in *Asif @ Pasha (supra)* and *Jamnalal (supra)*. However,

what is to be noted is that even in *Bhagwan Rama Shinde Gosai & Ors. (supra)*, the Hon'ble Apex Court had stated that when a person is sentenced to a fixed period of sentence, suspension has to be considered and if for any reason, the same cannot be suspended, effort should be made to dispose of the appeal on merits. In the instant case, the reason why the sentence cannot be suspended has already been discussed above.

10. In view of the above, the prayer for suspension of sentence and consequent bail is rejected.

11. I.A stands disposed of accordingly.

12. Registry is directed to list the connected appeal for hearing after vacation.

JUDGE

Comparing Assistant