

GAHC010208772025



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

Case No. : I.A.(Crl.)/1063/2025
in
Crl. Appl. No. 371/2025

JAKIR HUSSAIN
SON OF LT. RAHIMUDDIN RO VILL NO.2 SONAPUR P.S. BIHPURIA,
DISTRICT LAKHIMPUR, PIN-784161, ASSAM

2: ATOR ALI
SO LT. JUBED ALI
RO VILL NO 2 SONAPUR P.S BIHPURIA
DISTRICT LAKHIMPUR
PIN 784161
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP, ASSAM

2:HASNARA BEGUM
WO MD. WAHID ALI
RO VILL 2 NO SONAPUR P.S. BIHPURIA
DISTRICT LAKHIMPUR
PIN784161
ASSA

Advocate for the Petitioner : MS A GOGOI, MS G GOGOI,MR S GOGOI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

19-03-2026

Heard Mr. S. Gogoi, learned counsel for the applicant/appellant and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the respondent No.1. Also heard Mr. S. J. Sarmah, learned counsel for the informant/respondent No.2.

2. This is an application filed under Section 430 BNSS, 2023 praying for suspension of the judgment and order of conviction dated 08.07.2025, passed by the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur in Special (POCSO) Case No.146/2018 convicting the accused/appellant under Section 313 IPC, read with Section 4 of the POCSO Act sentencing him to undergo R.I. for 6 (six) years and to pay fine of Rs.6,000/- under Section 313 IPC with default stipulation and also sentenced to undergo R.I. for 10 (ten) years and to pay fine of Rs.8,000/- for the offence under Section 4 of the POCSO Act with default stipulation.

3. It is submitted by Mr. Gogoi, learned counsel that there are sufficient contradictions in the evidence of the PWs and they could not even prove the foundational facts of the case and to prove a case, specially, in a POCSO case, there are some requirements specifically the age of the victim, the proof of the alleged incident and also that accused committed the offence and also to support the case with medical evidence if any injury is caused to the victim. In support of his submission he also relied on a decision of the Hon'ble Tripura High Court at Agartala in the case of **Joubansen Tripura Vs. The State of Tripura (Crl. Appeal (J) No. 30/2018 decided on 01.04.2021)**.

4. Mr. Gogoi, learned counsel basically relied on the fact that though the case is registered and convicted under Section 4 of the POCSO Act, but the prosecution could not prove the age of the victim as below 18 years at the relevant time of the incident. He submitted that at the time of filing of the FIR, which has been filed in the year 2018, the age of the victim was mentioned as 17 years, but surprisingly at the time of recoding her evidence before the learned Special Judge (POCSO) in the year 2022 also she disclosed her age as 18 years though her evidence was recorded after 4 years from the date of the occurrence. More so, from the evidence of the PW-9, the I.O. it is also seen that he claimed that one birth certificate/school certificate was collected from the Headmaster of a School but during the course of evidence, neither the birth certificate nor the Headmaster was cited as a witness to prove the age of the victim. More so, the learned Special Judge at the time of passing the judgment in para-31 it is categorically discussed that the prosecution could not produce any age proof documents or the school certificate etc., at the time of the evidence. But considering the statement made by the victim that she was a student of Class VII at the time of the incident and also considering the age as disclosed in the FIR and the evidence of the DW-2 who also stated in his evidence that the victim girl was nearly about 14/15 years of age at the time of the incident. Considering this aspect of the case, the learned Special Judge had considered the age of the victim as a minor at the time of the incident and accordingly, it was held that the case was established under Section 4 of the POCSO Act.

5. Mr. Gogoi, learned counsel, in that context also relied on a decision of the Hon'ble Supreme Court passed in Civil Appeal No. 6466/2004 decided on 13.08.2010 (**Madan Mohan Singh and Ors. Vs. Rajni Kant and Ors.**),

wherein, in para 17 it has been discussed that for determining the age of a person, the best evidence is his/her parents, if it is supported by unimpeachable documents, which may be birth certificate or school certificate etc. In that context, Mr. Gogoi, also relied on another decision of the Hon'ble Supreme Court passed in Criminal Appeal No. 1898/2023 decided on 18.07.2023 **(Yuvaprakash Vs. State Rep by Inspector of Police)**.

6. Relying on the above noted judgments, it is submitted by Mr. Gogoi, learned counsel that the prosecution could not prove the minor age of the victim at the relevant time of the incident, which is the most essential ingredients to establish a case under Section 4 of the POCSO Act and thus, there is every chance of acquittal in the present case and accordingly the prayer for bail of the applicant/appellant may be considered at this stage, who is behind the bars for last 333 days as on today.

7. To prove the distinction between miscarriage and abortion, Mr. Gogoi, also relied on a decision of the Hon'ble High Court of Mysore in CrI. Appeal No. 112/1953 decided on 09.11.1954 **(In Re. Malayaru Seethu)** wherein it is discussed in para 6 of the said judgment about the distinction between miscarriage and abortion as per the Medical Jurisprudence.

8. He further submitted that the accused appellant being a permanent resident of the addressed locality will provide sufficient surety if he is granted the privilege of bail and there is no chance of his absconding even if his bail prayer is considered by suspending/staying the sentenced imposed upon him.

9. Mr. Sarma, learned APP submitted in this regard that the learned Special Judge (POCSO) had discussed about the age of the victim in para 30 and 31 of the judgment, wherefrom it is seen that the girl stated to be a student of Class

VII at the relevant time of incident and at the time of lodging the FIR, her age was 17 years which has not been challenged by the defence. That apart, the DW-2 who adduced his evidence in support of the defence had also admitted that victim was a student of Class VII and was only 14/15 years of age at the relevant time of the incident. Thus, the age of the victim had already been discussed by the learned Special Judge at the time passing the order.

10. Mr. Sarma, learned APP further submitted that two defence witnesses have been produced by the defence side, but it could not substantiated that the appellant has not committed the offence as alleged against him. Mr. Sarma further submitted that the PW-8 i.e., the Medical Officer is also an important witness who stated about her miscarriage and abortion while she was under examination. It was categorically stated that sign of old miscarriage and abortion is found at the time of her examination which fully supports the case of prosecution, wherein she not only brought the allegation of rape against her at her minor age but also brought the allegation of abortion by the accused appellant.

11. Mr. Sarma, learned APP further submitted that there may be some minor contradictions and omissions, but as per the case of **Gurmeet Sing (supra)** the Hon'ble Apex Court had observed that merely for the minor contradictions and omissions, the evidence of the prosecution witnesses cannot be thrown out if it inspires confidence.

12. He further submitted that there is no such inconsistency in the evidence of the prosecutrix and there is no major contradiction to disbelieve her evidence.

13. Mr. S. J. Sarmah, learned counsel appearing for the informant/respondent No.2 also submitted in this regard that there are sufficient materials against the

present petitioner and the prosecution could establish a case against the appellant/appellant and the foundational facts are also been proved by the prosecution. He further submitted that PW-8 is a very important witness and his medical evidence supports the prosecution in regards to the MTP caused to her and finding a old sign of miscarriage and abortion at the time of her examination. He accordingly raised objection and submitted that the petition for bail and suspension of sentence may not be considered at this stage.

14. I have heard the learned counsel for the parties and also perused the case record and the evidences recorded by the learned Special Judge and the judgment and order.

15. The learned counsel for the petitioner basically emphasized on the point that the victim was not a minor at the relevant time of incident and her age also could not be proved by producing any documentary evidence and though the PW-9, the I.O. stated in his evidence that he procured the school certificate from the Headmaster but neither the school certificate was exhibited, nor the Headmaster was examined as prosecution witness to prove the age of the victim and it is an admitted fact that in a case of POCSO age of the victim is a very relevant factor and in the present case, it is seen that the accused appellant was convicted under Section 4 of the POCSO Act.

16. Though the plea of age prove is taken at this stage, but on perusal of the case record and evidences it is seen that there is no such plea or the age of the victim was also not disputed while cross examining the PWs or by adducing any relevant evidence to that regard. But admittedly there is no age proof document produced by the prosecution to prove the minor age of the victim. All the witnesses corroborated to each other had stated that the victim was a minor of 17 years at the time of the incident and she was a student of Class VII.

17. The learned counsel for the appellant also raised the issue that at the time of filing the FIR the age of the victim was written as 17 years which was filed in the year 2018 and at the subsequent stage i.e., after four years at the time of recording her statement in the year 2022 she disclosed her age as 18 years which not possible and prima facie it reveals that she disclosed a false case at the time of recording her evidence.

18. But disclosure of the age at the time of recording evidence is not under oath and there may be some mistakes of calculation at the time of adducing evidence by the victim, but only for that reason it cannot be held that she had falsely disclosed her age as 17 years at the time of lodging the FIR. Thus, prima facie it is seen that the victim was stated to be minor at the relevant time of incident and her age is also not disputed by the defence while cross examining/cross examining the witnesses.

19. Further it is seen that the defence evidence, i.e., DW-2 also stated that at the time of incident, she was only 14/15 years of age and thus, it is seen that defence also admitted about her minor age at the time of incident. From the other evidence it is seen that the victim was found consistent and there is no such major contradictory statement to disbelieve the evidence of the victim in regards to her disclosure of age of 17 years.

20. Thus at this stage it cannot be held there is every chance of acquittal of the accused on the plea that the victim was not a minor at the time of incident.

21. It is also seen that the accused appellant is not only convicted under Section 4 of the POCSO Act but he is also convicted under Section 313 IPC for illegal or threatened abortion of her pregnancy. This part of evidence fully supported by the medical evidence and the Doctor, i.e., PW-8 who also found

old sign of abortion and miscarriage at the time of her examination, which otherwise supports the case of the prosecution regarding her abortion of pregnancy.

22. So considering all these aspects of the case prima facie it is seen that it cannot be held at this stage that there is every chance of acquittal of the accused appellant after the final hearing of the case to consider his bail prayer by suspending the sentence imposed upon him by the learned Special Judge (POCSO).

23. In view of above, I do not find it a fit case to allow the present application by suspending/staying the operation of the impugned judgment and order dated 08.07.2025, passed by the learned Special Judge (POCSO), Lakhimpur, North Lakhimpur in Special (POCSO) Case No.146/2018 and to allow the applicant/appellant to go on bail at this stage and accordingly the same stands rejected.

24. However, endeavour shall be made to dispose of the connected appeal within a short period of time and all these aspects will be considered at the time of final hearing of the connected appeal.

25. This interlocutory application accordingly stands disposed of.

JUDGE