

GAHC010249362025



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

Case No. : CrI.A./424/2025

MANIK ALI
S/O - MAINA ALI
VILLAGE 4 NO SONAPUR P S GOGAMUKH DIST DHEMAJI ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P P ASSAM

2:MUSSTT HASINA BEGUM
W/O - MD. NUR HOQUE ALI
VILLAGE 4 NO SONAPUR P S GOGAMUKH DIST DHEMAJI ASSA

Advocate for the Petitioner : MR BABUL ISLAM, MR B ISLAM,MR B TAID,MR. J C GOGOI

Advocate for the Respondent : PP, ASSAM, MS T PARASHAR (AMICUS CURIAE,R2)

Linked Case : I.A.(CrI.)/1240/2025

MANIK ALI
S/O - MAINA ALI
VILLAGE 4 NO SONAPUR P S GOGAMUKH DIST DHEMAJI ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY P P ASSAM

2:MUSSTT HASINA BEGUM
W/O - MD. NUR HOQUE ALI
VILLAGE 4 NO SONAPUR P S GOGAMUKH DIST DHEMAJI ASSAM

Advocate for : MR BABUL ISLAM
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 03.06.2026

- 1.** Heard Mr. B. Islam, learned counsel for the applicant. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State as well as Ms. T. Parashar, learned Amicus Curiae, appearing for the respondent No. 2.
- 2.** This interlocutory application under Section 430 of BNSs has been filed by the applicant, namely, *Manik Ali* praying for suspension of sentence imposed on him by the judgment and order dated 22.07.2025, passed by the Court of learned Special Judge (POCSO), Dhemaji, in Special (POCSO) Case No. 06/2024 arising out of Gogamukh P.S. Case No. 206/2021 whereby the applicant was convicted under Section 4 of the POCSO Act and was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer rigorous imprisonment for another three months. The applicant was also convicted under Section 341 of the Indian Penal Code and was sentenced to pay a fine of Rs.500/- with default stipulation. The aforesaid judgment and order has been impugned by the present applicant in the connected Criminal Appeal No. 424/2025.
- 3.** The facts relevant for consideration of the instant interlocutory application, in brief, are that on 01.11.2021, the mother of the victim girl lodged an FIR before the officer-in-charge of Gogamukh Police Station, *inter alia*, alleging that on 30.10.2021, at about 7:00 PM, her daughter (victim girl) who

was aged about fourteen years at that point of time was raped by the present applicant.

4. On receipt of the said FIR, Gogamukh P.S. Case No. 206/2021 was registered and investigation was initiated. During the course of investigation, it came to light that the present applicant was aged about seventeen years, ten months and ten days at the time of alleged incident and, therefore, he was produced before the Principal Magistrate, Juvenile Justice Board, Dhemaji. After completion of the investigation, offence report/charge-sheet was laid against the present appellant before the Juvenile Justice Board, Dhemaji. However, during preliminary assessment conducted under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, it was held that the present applicant is required to be tried as an adult and, accordingly, the aforesaid case was transferred to the Children's Court, i.e., the Court of Sessions Judge, Dhemaji for trial. After trial, the present applicant was convicted under Section 4 of the POCSO Act, 2012 and Section 341 of the Indian Penal Code and accordingly was sentenced in the manner as has already been described in the foregoing paragraphs of this order.

5. Mr. B. Islam, learned counsel for the applicant has submitted that the present applicant has impugned the aforesaid judgment in the connected appeal and there is every possibility of getting a favorable result in the pending appeal. He submits that the trial court had erred in convicting the applicant under Section 4 of the POCSO Act, 2012 for committing penetrative sexual assault on the victim girl without considering the medical examination report as well as testimony of the doctor who was examined as PW-8 during the trial.

6. He submits that though the PW-5 i.e., the victim girl, has deposed that

she was raped by the present applicant when she was coming back to her home, in a paddy field, at about 7:00 PM, however, the medical examination report of the victim girl does not show any injury marks on the person of the victim girl. He submits that even the hymen of the victim girl was found intact and on internal examination of the private parts of the victim girl, no injury marks were found.

7. The learned counsel for the applicant submits that had the victim girl been subjected to penetrative sexual assault, there would have been some injury marks on her person, more specifically, on her private part as she was examined on the very next day of the alleged incident. He further submits that the stand of the victim girl was not consistent during the entire criminal proceeding as before the Magistrate, who recorded her statement, she has narrated a different version than what she had stated before the trial court. He submits that the victim girl has stated before the trial court while deposing as PW-5 that after the incident, when she came back to her home, she disclosed about the incident to her parents. Whereas, in the statement recorded under Section 164 of Code of Criminal Procedure, 1973, she has stated that she disclosed the incident only to her mother.

8. The learned counsel for the applicant also submits that the trial court also did not take into consideration the evidence of the DWs who have narrated a different story. He also submits that though the victim girl while deposing as PW-5 has stated that the alleged incident occurred in a paddy field. However, the sketch map prepared by the Investigating Officer shows that the place of occurrence of offence was jungle and no mention about paddy field is there.

9. The learned counsel for the applicant submits that considering the

inconsistencies, there is every likelihood that the appeal filed by the present applicant would result in his acquittal and as such, during the pendency of the said appeal, if the sentence imposed on the applicant is not suspended, he would suffer great prejudice and, therefore, he prays for suspending the sentence imposed on the applicant during the pendency of the of the connected criminal appeal and allow him to go on bail during this period.

10. The learned counsel for the petitioner in support of his submission has cited a ruling of this court in the case of "*Promud Yadav Vs. State of Assam and Anr.*"(Judgment dated 01.04.2025, in Criminal Appeal No. 303/2023).

11. On the other hand, Mr. M. P. Goswami, learned Additional Public Prosecutor has opposed the suspension of sentence during the pendency of the connected appeal on the ground that the contradictions regarding narrating the incident by the victim girl to the parents in her testimony before the court and to her mother only in her statement recorded under 164 of the Code of Criminal Procedure, 1973 was not brought to the notice of the victim girl while she was cross-examined by the defense side. He also submits that otherwise also this contradiction does not go to the root of the case. He also submits that the definition of penetrative sexual assault as provided in Section 3 of the POCSO Act, 2012 itself indicate that penetration to any extent is sufficient to constitute offence under Section 3 of the POCSO Act, 2012 and hence, there may be a case of penetration where it may not rupture the hymen or cause any injury to the hymen. Therefore, on that ground, the conviction of the petitioner may not be unsettled. He also submits that regarding the place of occurrence of offence also, the PW-5 was not cross-examined to that effect and hence, the said contradiction is also not fatal to the prosecution case.

12. He also submits that since the connected appeal is ready for hearing, the matter may be finally heard and disposed of instead of letting the applicant go on bail at this stage as the offence involved in this case is a serious offence.

13. On the other hand, Ms. T. Parashar, learned Amicus Curiae has submitted that in an offence involving sexual offence, the testimony of victim is sufficient to come to a finding of guilt of the accused in such cases if the said victim is found to be a sterling witness. She submits that in the instant case, the stand of the victim throughout the case has remained consistent and the prosecution side could not demolish her testimony during cross-examination. She also submits that the contradictions pointed out by the learned counsel for the petitioner do not go into the root of the case.

14. She also submits that the corroboration by medical evidence is also not necessary in cases involving sexual offence under Section 376 or under Section 4 of the POCSO Act. She submits that if the court comes to a finding that the testimony of prosecutrix is trustworthy and she is a credible witness, her sole testimony may be relied upon to come to a finding of the guilt of such an accused. She also submits that there is unlikelihood of the petitioner getting a favorable order in a connected appeal and hence, she submits that since the offence involved in this case is a heinous offense under POCSO Act, the prayer for suspension of sentence during the pendency of the connected appeal may be rejected and the appeal may be heard finally. In support of her submission, she has cited following rulings:-

(i) "***Phool Singh Vs. The State of Madhya Pradesh***" reported in "***(2022) 2 SCC 74***"

(ii) "***Ranjit Hazarika Vs. State of Assam***" reported in "***(1998) 8 SCC 635***".

15. I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by learned counsel for both sides in support of their respective submissions.

16. It appears from record that the connected appeal is ready for hearing. Though, while considering an application for suspension of sentence under Section 430 of BNSS, this court is reluctant to give any definitive opinion on the contentions made by the learned counsel for respective parties at this stage as it may have a bearing on the final outcome of the appeal. However, had this been a case where any of the contentions raised by learned counsel for the applicant gives an indication that the connected appeal is surely going to end in acquittal, this would have been a case where sentence may have to be suspended during the pendency of the connected appeal. However, this court is of considered opinion that that is not the case in the instant case. The contentions raised by the learned counsel for the applicant needs to be examined and same can be done only in final hearing.

17. Whether the contradictions pointed out by the learned counsel for the applicant affects the core of the prosecution case or not also needs to be examined during the final hearing of the connected appeal.

18. This court, however, is of the opinion that in every case where conviction under Section 4 of the POCSO Act, 2012 is made, there may not be any necessity of examining as to whether the victim girl has sustained injuries in her private parts or whether her hymen has been ruptured or not. As the definition of penetrative sexual assault as provided in Section 3(a) and 3(b) clearly indicate that the penetration to any extent is sufficient to constitute an

offence under Section 4 of the POCSO Act. Hence, in a case where penetration is not complete there may not be injury on the private part of the victim girl.

19. Now, whether in the instant case, whether there are materials on record to indicate that the penetration was to such extent or not has to be considered during the final hearing of the connected criminal appeal and not at this stage. Hence, considering the nature of offence and the reasons stated above, this court is not inclined to suspend the sentence imposed on the applicant at this stage.

20. However, considering the fact that the petitioner was a juvenile at the time when the alleged offence was committed, the connected appeal is required to be heard expeditiously.

21. Accordingly, let the connected appeal be listed for hearing on 30th of July, 2026.

22. This interlocutory application is accordingly disposed of.

JUDGE

Comparing Assistant