

GAHC010252602024



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

Case No. : I.A.(CrI.)/523/2025

ESAMUDDIN @ ICHAMUDDIN
S/O - LT. OBAJID ALI
R/O - GOHAIN DOLONI
PS - BIHPURIA P.O. - SONAPUR
DIST - LAKHIMPUR, ASSAM
PIN - 787054

VERSUS

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

2:RUSIA BEGUM
W/O - MD ASMOT ALI
R/O - GOHAIN DOLONI
PS - BIHPURIA P.O. - SONAPUR
DIST - LAKHIMPUR
ASSAM
PIN - 78705

Advocate for the Petitioner : MR M H AHMED, MR. O ULLAH,I AMIN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN**

ORDER

Date : 27.02.2026

Heard Mr. M.H. Ahmed, learned Counsel appearing for the applicant, Mr. MP Goswami, learned Additional Public Prosecutor for the State and Mr. M. Rahman, learned Counsel appearing for the respondent no.2.

2. By this application filed under Section 430 of the BNSS, 2023, the applicant has prayed for suspension of the judgment and order of conviction and to allow him to go on bail pending the appeal.

3. The petitioner was convicted by the said judgment and order dated 30.08.2024 passed by the Special Judge, POCSO, North Lakhimpur in Special POCSO Case No. 18 of 2015 by which the applicant was convicted under Section 457 of the IPC as well as under Section 6 of the POCSO Act and was sentenced to undergo rigorous imprisonment for a term of 5 years with fine and default stipulation under Section 457 of the IPC as well as to undergo rigorous imprisonment for 10 years with fine and default stipulation under Section 6 of the POCSO Act.

4. The prosecution case as is revealed from the FIR is that the mother of the victim lodged the same stating inter alia that when they were not in their house, the petitioner entered their house by opening the door and raped her

13 years old daughter while she was sleeping inside the house. The police on receipt of the FIR registered the case and upon completion of the investigation submitted charge sheet against the petitioner under Section 457/376 of the IPC read with Section 4 of the POCSO Act. On completion of necessary formalities, the charges were framed against the petitioner under Section 6 of the POCSO Act along with 457/376 of the IPC and the trial started.

5. During the trial, the prosecution examined 11 witnesses whereafter the applicant was examined under Section 313 of the Cr.PC. and after examination of 3 defence witnesses and on completion of the trial, the applicant was convicted and punished as stated above.

6. Mr. MR Ahmed, learned Counsel for the applicant submits that there are contradiction in the statement of the witnesses to the effect that the mother of the victim stated that the applicant did not attend the bichar whereas one of the independent witness in his cross-examination had stated that the applicant attended the bichar and he stated that he owed Rs. 1500/- from the father of the victim and he went to ask for the same and the father chased him out of his house and the mother of the victim lodged the ejahar pursuant to that. He further submits that there is discrepancy in mentioning the age of the victim in the depositions of various witnesses. He further

submits that there is discrepancy in the statement of PW1 and PW2 i.e. the victim and her mother before the Trial Court. As such, he submits that due to the various discrepancies in the statement of all the witnesses, the sentence imposed upon the applicant may be suspended and he may be released on bail.

7. On the other hand, Mr. MP Goswami, learned Additional Public Prosecutor for the State submits that in the cases of such nature what needs to be seen is the consistency in the statement of the victim before all those authorities and that he submits that the victim has given consistent statement before the Magistrate the police and the trial court, to the extent that the applicant entered into the house of the victim and committed rape upon her which is again supported by PW3, the aunt of the victim.

8. Mr. M Ahmed, learned Counsel appearing for the respondent no.2 also submits that PW3 have stated in clear terms that the petitioner had entered into the house of the victim and committed rape upon her.

9. I have heard the Counsels and I have gone through the records.

10. It is noticed in the statement of the victim that the victim stated that she and the aunt were sleeping in separate rooms in the said house and that the petitioner entered the said house and committed rape upon her, whereas the aunt examined as PW3 had stated that she and the victim and other two

girls were sleeping on the same bed and that accused came inside the house and climbed over the body of the victim and by removing her clothes, he raped the victim. She also said that the applicant ran away from there in a naked condition. The two statements are contradictory to each other. Further, in her 164 Cr.P.C. statement before the magistrate, she stated that she along with her aunt and her brother and sister and another girl were sleeping in the same room and that at night the petitioner entered the room and committed sexual offence upon her whereas in her statement before the Trial Court, she stated clearly that she and her aunt were sleeping in different rooms. Further, she did not speak about her brother and her sister along with another girl being with her on that night. There appears to be a discrepancy in her statement before the authorities. Further, there is discrepancy in the evidence of the mother of the victim and a neighbor, who said that the applicant appeared before the bichar and narrated that he was supposed to get Rs. 1500/- from the father of the victim whereas the mother of the victim stated that the petitioner did not appear in the bichar at all.

11. In view of the said discrepancy, this Court deems it fit to suspend the sentence imposed upon the petitioner by judgment and order dated 30.08.2024 during the pendency of the appeal and further directs that the petitioner be released on bail on furnishing of bail bond of Rs. 20,000/- with

a suitable surety of like amount to the satisfaction of the Special Judge,
POCSO, Lakhimpur, North Lakhimpur.

12. I.A. is disposed of.

JUDGE

Comparing Assistant