

GAHC030004462021



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

Case No. : I.A.(Crl.)/23/2021

Joseph Lalhrietzing
S/o Vansangrem (L)
R/o Hmarkhawlian,
Cachar District, Assam

VERSUS

State of Mizoram and Anr.
Aizawl, Mizoram 2:Joseph Laltanpui

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mrs. Linda L Fambawl (Addl.PP, Mizoram)

Linked Case : Crl.A./19/2021

Joseph Lalhrietzing
S/o Vansangrem (L)
R/o Hmarkhawlian
Cachar District
Assam

VERSUS

State of Mizoram and Anr.
Aizawl
Mizoram

2:Joseph Laltanpuia

S/o Lalchuangliana(L)
R/o Chaltlang Venglai
Aizawl

Advocate for the Petitioner : Mr A.R. Malhotra
Advocate for the Respondent : Mrs. Linda L Fambawl (Addl.PP
Mizoram)

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

17.12.2021

Heard Mr. A.R. Malhotra, the learned counsel for the applicant and Mrs. Linda L. Fambawl, the learned Addl. Public Prosecutor for the State respondents.

By filing this application under Section 389 CrPC, the applicant prays for suspension of the sentence imposed upon him alongwith the Judgment and Order dated 15.11.2021 convicting him under Section 10 of the POCSO Act, 2012 passed by the Presiding Officer, Fast Tract Special Court (Rape & POCSO Act) in SC No. 61 of 2017 arising out of Criminal Trial No. 494/2017.

The learned counsel Mr. A.R. Malhotra submits that the applicant was convicted by the learned Trial Court solely on the basis of the evidence of the PW1 and PW6 who are the member of the Child Line and the Investigating Officer respectively.

He submits that there are material contradiction in the version of the prosecutrix herself and in the evidence of PW1 and PW6. According to the prosecutrix, the alleged offence was committed while she was sleeping in the bed of her parents whereas, according to the PW1 and PW6, both the prosecutrix and the applicant were sleeping in one room but on a separate bed. He further submits that according to PW1, the prosecutrix narrated the incident to her colleague Ms. C. Lalremruati, who was also examined as PW5. However, the Trial Court in the impugned Judgment and Order has come to a finding that the prosecutrix had narrated the incident to PW1. The learned counsel also submits that as per the evidence of PW5, there is

nothing on record to show that the prosecutrix had narrated the incident to her. As such, the learned counsel submits that the impugned Judgment and Order and the Sentence be suspended pending disposal of the appeal and that the applicant may be released on bail.

Mrs. Linda L. Fambawl, the learned Addl. Public Prosecutor, on the other hand, submits that the learned Trial Court cannot be said to have convicted the appellant solely on the evidence led by PW1 and PW6. In fact, the Trial Court has taken into consideration the evidence led by the parties during the trial in its entirety. She submits that there may be some minor discrepancies in the evidence of the prosecution but the same is negligible and can be ignored particularly when the alleged offence has been committed upon a child who was under aged.

Referring to the evidence of the defence, the learned Addl. Public Prosecutor submits that there is no material on record to show that the child had mental problem. The evidence clearly shows that the prosecutrix was never examined medically in order to justify evidence led by the defence witnesses. Under the circumstance, the learned Addl. Public Prosecutor submits that the appeal may be examined on merit and the application for suspension be rejected.

I have heard the submissions made by the learned counsels for the rival parties. As pointed out by the learned counsel for the applicant, it is seen that there are discrepancies in the evidence led by the prosecution and it appears that the conviction was made by the Trial Court mainly on the basis of the evidence led by PW1 and PW6. Although the appellant has not annexed a copy of the deposition of the prosecutrix, who was examined as PW2, the same is found in the impugned Judgment and Order itself. There appears to be variation in the narration of the incident. It is further seen that the applicant was arrested on 25.11.2016 but he was enlarged on bail under 13.12.2016, barely after 18 or 19 days of his arrest. Therefore, under the circumstance, I am of the considered view that a case for suspending the sentence imposed upon the applicant is made out.

Accordingly, the sentence imposed upon the applicant is suspended and he is directed to be released on bail upon furnishing a bail bond of Rs. 15,000/- (Rupees fifteen thousand) with one local surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate,

Aizawl Judicial District, Aizawl.

It is also made clear that the above observation is only a prima facie finding of this Court for the purpose of suspending the sentence and the same shall not have any bearing on the merit of the case when the appeal is taken up for final disposal.

The IA is accordingly disposed of.

JUDGE

Comparing Assistant