GAHC010165512026

2026:GAU-AS:15724

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

Case No. : I.A.(Crl.)/829/2026
in
Crl. A. No. 282/2026

SRI BHABEN NATH @ BHUBEN NATH
S/O LT. BOGIRAM NATH, VILLAGE- BOGORIGURI, P.S. - MORIGAON,
DISTRICT - MORIGAON, ASSAM. PIN -782105.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:KABITA MEDHI
W/O LATE BHAKTABINDA MEDHI R/O - KAHIBARI
P.S. - MORIGAON
DISTRICT - MORIGAON
ASSAM PIN - 782105

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

15-10-2026

Heard Mr. S. K. Poddar, learned counsel for the applicant/appellant and Mr. K. K. Das, learned Additional Public Prosecutor, Assam for the respondent No.1. Also heard Ms. T. Parashar, learned Amicus Curiae for the respondent No.2.

2. This is an application filed under Section 430 BNSS for suspension of sentence and to allow the applicant/appellant to be released on bail, during the pendency of the appeal.

3. It is submitted by Mr. Poddar, learned counsel that initially the case was registered under Morigaon P.S. Case No. 167/2022 under Section 354(A) of IPC read with Sections 10/12 of the POCSO Act and subsequently, the case was charge sheeted against the present applicant/appellant under Section 354A/354D of IPC read with Sections 10/12 of the POCSO Act. But later on, the charge was framed against the applicant/appellant under Section 10 of the POCSO Act and additional charges under Section 376(3)/354 IPC read with Section 6 of the POCSO Act was framed, wherein the accused applicant/appellant pleaded not guilty and claimed to be tried.

4. After completion of the trial the learned Special Judge (POCSO), Morigaon vide its judgment and order dated 20.07.2026 in POCSO Case No. 113/2022 had convicted the applicant/appellant under Section 10 of the POCSO Act and sentenced him to undergo R. I. for 7 years and to pay fine of Rs.15,000/- with default stipulation and further sentenced to undergo R.I. for 5 years for Section 354 IPC along a fine of Rs.5,000/- with default stipulation.

5. On being dissatisfied with the judgment passed by the learned Special Judge, POCSO, Morigaon a criminal appeal has already been preferred by the present applicant and the present application has been filed seeking suspension of the sentence and to release the accused applicant/appellant on bail, till disposal of the connected appeal.

6. It is submitted by Mr. Poddar, learned counsel that there are sufficient ground for acquittal of the accused applicant/appellant which have already been

taken in the appeal.

7. He basically submitted that as per the allegation the victim girl was subjected to sexual assault for 1 year prior to lodging of the FIR, the accused sexually exploited the victim girl while she was in Class-VII and it was continued up to Class-VIII when the matter was informed to some of the teachers as well as her friends and finally informed to her mother. But surprisingly, the victim never reported the matter even before her mother for last 1 year before filing of the FIR which is quite improbable and cannot be believed. From her evidence it also reveals that she initially reported the matter before PW-3, who is her sister-in-law (Bou), but said reported witness, i.e., PW-3 was declared hostile by the prosecution as she did not support the case of the prosecution.

8. He further submitted that from her evidence it also reveals that she also reported the matter to one of her friend, namely Dharitri and Samir and said Samir has also saw the incident on some days, but inspite of that the prosecution did not examine the friend of the victim, namely, Dharitri and Samir, who also saw the incident, being in the same school.

9. Mr. Poddar, learned counsel further stressed on the point that the victim was admittedly studying in ME School during the relevant time and she was in Class VII and subsequently promoted to Class VIII. But, none of the teachers of the said school, even, the lady teachers before whom she also reported the matter were not examined by the prosecution and more surprisingly the accused applicant/appellant is a teacher of the L.P. School and he is not a teacher of M. E. School as stated. To substantiate the said plea, the defence also examined one of the Teacher, who also issued the certificate stating that the accused applicant/appellant is a teacher of the L. P. School and not the M.E. School teacher. Furthermore, one Chowkidar is also examined as DW-3, who

categorically deposed that he never handed over the key to the accused applicant/appellant and never saw the incident being the chowkidar of the M.E. School. Thus, from those evidences it is prima facie seen that some false and concocted allegation has been brought against the applicant/appellant, wherein he was not even a teacher of the M.E. School, where the victim was studying and reportedly the incident had happened in the classroom and even in the kitchen wherein the possibility of the presence of the accused is nil. More so, the medical evidence of the Doctor does not support the case of the prosecution.

10. Mr. Poddar, learned counsel further submitted that the learned Special Judge had convicted the accused applicant/appellant under the provision of Sections 29/30 of the POCSO Act with an observation that the prosecution was able to prove the foundational facts of the case and accused applicant/appellant could not rebut the same.

11. He further submitted tht it is the principle of criminal jurisprudence that the prosecution has to prove its case beyond all reasonable doubt and not on the basis of preponderance of probabilities. In that context, he also relied on a decision of the Apex Court in the case of **Deepak In JC Vs. State Government of NCT Delhi** reported in **2026 Supreme (SC) 1135** and basically relied on para 8 and 9 of the said judgment, which read as under:

> "8. The operation of the statutory presumptions would also not permit the departure from the well-recognized principle, which is the golden thread running through the web of criminal justice administration that if two views are possible on the evidence adduced in the case, one pointing towards guilt of the accused and the other towards innocence, the view which is favouring the accused should be adopted. This again reiteration in different way of the dictum that the guilt of the accused has to be proved beyond reasonable doubt and not on the basis of preponderance of probability.
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> 8.1 In Kali Ram vs. State of Himachal Pradesh18, this Court observed that unless the evidence adduced in the case (1975) 4 SCC 761 (1973) 2 SCC 808 is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain

from recording a finding of guilt of the accused, observed in paragraph 25.

8.1.1 Kali Ram (supra) also answered the aspect as to whether the above proposition should be applied and would hold truth for trying an accused person for the offences under the statute which raise presumption of guilt and culpability against the accused. It was observed,

> "There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal." (Para 23)

8.1.2 In Kali Ram (supra), following was further stated,

> "It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record……" (Para 26)

8.1.3 It was further observed that if an innocent accused is not acquitted, it would against not only the interest of the accused but also against public interest,

> "….Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is more apparent than real. As observed on p. 3 of the book entitled The Accused by JA Coutts 1966 Edition, "When once it is realised, however, that the public interest is limited to the conviction, not of the guilty, but of those proved guilty, so that the function of the prosecutor is limited to securing the conviction only of those who can legitimately be proved guilty, the clash of interest is seen to operate only within a very narrow limit, namely, where the evidence is such that the guilt of the accused should be established. In the case of an accused who is innocent, or whose guilt cannot be proved, the public interest and the interest of the accused alike require an acquittal."

9. In the case of conviction or acquittal of the accused facing trial for any criminal offence, what is necessarily involved is the issue of his personal liberty. When an issue concerning the liberty of an individual is involved to be dealt with in law, the court has to be extra careful and cautious. The court should always undertake objective assessment and appreciation of evidence. Therefore, in addressing the entitlement of the accused to the acquittal, the court should not overweigh itself with the provisions like that of Section 29 or Section 30 of the POCSO Act."

12. He further submitted that a false and concocted case has been instituted against the present applicant/appellant as some land was mortgaged with the

appellant by the mother of the victim and neither she handed over the possession of the land to the accused applicant/appellant, nor any money was paid for the mortgaged land and only for that grudge, the false and concocted case is instituted by the mother of the victim.

13. He further submitted that apart from that there are various contradictions in the evidence of the PWs and the evidence of the victim is also not believable to warrant conviction against the accused applicant and thus, there is every chance of acquittal in the present case and hence, prayed for his release on bail by suspending the sentence imposed on him.

14. Further, he submitted that the accused applicant is a retired teacher of 62 years of age and he got his bail on the 19th day of his arrest and since then, he was regularly appearing before the learned Trial Court, till the order of the conviction was passed by the learned Sessions Judge. He is capable of providing sufficient surety to the satisfaction of the learned Special Judge and there is no chance of his absconding during the pendency of the appeal.

15. Ms. Parashar, learned Amicus Curiae appearing for the respondent No.2/ informant submitted that in a case of sexual offence, conviction can be based on the evidence of the prosecutrix and no corroboration is required, if her evidence is believable and trustworthy.

16. In the instant case also the victim gave a consistent statement in every stages, i.e., while recording her statements under Section 161 CrPC and 164 CrPC as well as while adducing her evidence before the Court. Her evidence in respect of the offence committed by the accused applicant/appellant could not rebutted by the defence neither by cross examining her, nor by adducing any evidence.

17. She further submitted that DW-3 who deposed on behalf of the applicant/appellant with the claim that he was a teacher of L.P. School at the time of the incident, it is seen that there is no reference, under which the certificate is issued to the applicant/appellant stating that he is a teacher of L.P. School and it also reveals that the said certificate was issued only on the request made by the accused applicant/appellant.

18. Further, it is seen that it is an afterthought case of the defence that due to previous grudge, i.e., mortgage of the land, the respondent No.2 had instituted the false and concocted case against the applicant/appellant. But no suggestion put to the PWs 1 and 2 and the plea was taken subsequently by the applicant/appellant which cannot be considered.

19. She further submitted that as per the evidence of the I.O. also it is seen that place of occurrence is the ME School and the I.O. also denied the suggestion that the applicant/appellant was LP School teacher at the time of the incident. Further, she submitted that from the cross examination of the DW-2 it reveals that both the Kumuraguri ME School and Kumuraguri LP School were amalgamated as per Government Notification of April, 2022 and after the said notification of the Government, both the above named Schools started functioning as one School.

20. She further submitted that the alleged incident took place in November, 2022 after the amalgamation of the Schools and that apart during the entire trial, the accused could not proved that he is a teacher of the LP School and as no access in the ME School.

21. In that context, Mr. Poddar, learned counsel submitted that though there was a notification of amalgamation, but both the functioning as one school only

from the year 2025 and from the said amalgamation only administrative functions were under the Head Teacher of the School but both the schools are functioning separately in regards to class rooms and teachers etc.

22. Ms. Parashar, learned Amicus Curiae submitted that as per Section 29 of the Act there can be presumption where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved. Thus, though there is a provision of presumption under Section 29 of the Act, but it is always rebuttable.

23. But, in the instant case, it is seen that the material facts of the case of molesting the minor student of Class VII for one year could not be rebutted by the accused applicant/appellant, neither by cross examining nor by adducing evidence. She further submitted that for the said mental trauma the girl left her studies and even refused to go to any other school for her such mental trauma. Accordingly, she submitted that there is prima facie material against the applicant/appellant for conviction and hence, the prayer for bail by suspending the sentence imposed on him at this stage may not be considered.

24. Mr. Das, learned APP also raised objection and submitted that the evidence of victim could not be rebutted to the extent of sexual assault on her. Further from the sketch map which has been exhibited by the I.O. it is seen that the place of occurrence is shown as the ME School and during the entire trial it was not disputed in regards to the place of occurrence. The victim also not cross examined to that regard as to whether the incident occurred inside the ME School premises or the LP School premises. The documents which is submitted on behalf of the appellant to prove that he was a teacher of LP School is also

not an authenticated document and the plea was not taken during the entire trial of the Court.

25. He further submitted that the case of such nature can be based on the evidence of the prosecutrix, if she is believable and trustworthy.

26. Mr. Das accordingly submitted that the learned Special Judge, POCSO, Morigaon had passed the order after considering all these aspects of the case and there is no prima facie case to held that there is a chance of acquittal for the present applicant/appellant to consider his bail prayer as well as prayer for suspension of sentence at this stage.

27. Heard the submissions made by the learned counsel for both sides.

28. The basic contention of the petitioner is that though the victim was alleged to have been subjected to sexual assault for 1 year prior to lodging of the FIR, but, she never made any complaint or she never reported the matter even to her mother. At the same time, the issue also raised that two of her friends were informed about the incident and one of her friend namely, Samir is also stated to be the eye witness to the incident, but those two vital witnesses were not examined by the prosecution and another vital witness, i.e., PW-3, who is the sister-in-law of the victim was also declared hostile by the prosecution and did not support the prosecution case. Apart from that another issue raised by the applicant/appellant that the entire incident is alleged to have taken place in the ME School, where the victim was studying in Class VII and next year she was promoted to Class VIII. But as per the DWs and as per defence case, the applicant was never a teacher of the ME School and since the date of his joining, he was a teacher of LP School, who got retired as LP School teacher and to that extent one certificate is also issued by the DW-3.

29. On the other hand, it is the case of the respondent/victim that she was subjected to sexual assault for 1 year, but due to threatening by the accused applicant/appellant, she had no courage to report anything before her friends or relatives as well as to her mother. But subsequently, the matter was reported to one of the teacher and her mother also came to know about the same and the FIR was accordingly lodged.

30. It is the further case of the prosecution that the victim remained consistent in every stages of the proceeding and there is nothing to disbelieve the victim, who brought the allegation of only sexual assault on her. It was also the case of the respondent that from the exhibits, the sketch map as well as from the evidence of the I.O., also it is seen that the place of occurrence is the ME School, wherein the incident had happened.

31. It is an admitted position that the victim did not report about the incident of sexual assault on her which continued for about 1 year till she was promoted to Class- VIII. But prima facie on perusal of the evidence of PW-1 and the supporting witness of her mother, i.e., the informant, it is seen that the defence could not rebut the case of the prosecution to the extent of sexual assault on her for continuous 1 year. Further, it is also an admitted fact that the prosecution did not examine two of her friends before whom she reported about the incident and one of her friend who also stated to be one of the eye witness. But those things can be taken into consideration at the time of final hearing of the connected appeal. But prima facie it is seen that the victim was consistent in her statement made in three stages, i.e., under Sections 161 and 164 CrPC as well as while adducing her evidence before the Court.

32. The main point raised by the defence is that the applicant/appellant was not discharging his duty as a ME School teacher, and from the certificate which

has been exhibited by DW-2 shows that he was the teacher of LP School and also got retired under the said strength. The Chowkidar of the school also deposed in favour of the applicant/appellant stating that he never handed over the key of the ME School to the applicant/appellant at the relevant time of incident.

33. Thus, it is the plea of the defence that being a teacher of LP School he had no connection with the LP School, wherein the victim was studying in Class VII. But surprisingly, while cross examining the PW-1, there is no suggestion that being the LP School teacher, he had no opportunity to visit the ME School premises. Rather, from the evidence of the victim it reveals that he used to take tuition of the victim even after the school hours, taking key from the Chowkidar and used to commit the offence even in the kitchen and there is no mention in the evidence of the PWs that he was the teacher of ME School. Rather, he used to commit the offence during tuition in the Classroom of Class VII. But those may the issues to be discussed and decided at the time of final hearing of the appeal. But prima facie it is seen that there is no such material contradictions in the evidence of the PW-1 and she is found to be consistent in every stages of her statement in respect of the sexual assault on her by the accused applicant/appellant.

34. That apart, the plea of mortgage of land was also not taken while cross examining PW-1 and PW-2, the victim and informant of the case respectively that the false case is initiated for previous grudge against the applicant/appellant.

35. More so, from the sketch map and the evidence of I.O., it is seen that the place of occurrence is the ME School and the I.O. denied the suggestion put to him in this regard. Further from the evidence it is seen that the accused

applicant/appellant used to commit the offence during the tuition period when the victim was asked to sit in the room of Class VII of the School. It is not the case that the accused committed the offence during the class hours.

36. So considering all these aspects of the case, it is seen that there is no prima facie case to consider the bail prayer of the accused applicant/appellant at this stage under Section 430 BNSS by suspending/staying the operation of the impugned judgment and order dated 20.07.2026, passed by the learned Special Judge (POCSO), Morigaon in POCSO Case No. 113/2022 and to allow the applicant/appellant to go on bail at this stage and accordingly the same stands rejected.

37. This interlocutory application accordingly stands disposed of.

JUDGE

Comparing Assistant