

GAHC010040502024



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

**Case No. : I.A.(Crl.)/390/2024**  
**in**  
**Crl.A./57/2024**

SANIDUL ISLAM  
S/O AMOLUDDIN

VILL.- DAWKIJHAR  
P.S.- BONGAIGAON  
DIST.- BONGAIGAON  
ASSAM.

VERSUS

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

2:AYAB ALI SHEIKH @ AIBALI SHEIKH  
S/O FAZOL HOQUE SHEIKH

VILL.- NO. 1 DAOKHANAGAR  
P.S.- DHALIGAON  
DIST.- CHIRANG (ASSAM).

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Advocate for : MR. M I HUSSAIN  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**  
**HONOURABLE MRS. JUSTICE MARLI VANKUNG**

**ORDER**

**28.03.2025**

*(S.K. Medhi, J.)*

Heard Shri PJ Saikia, learned Senior Counsel assisted by Shri P. Bordoloi, learned counsel for the applicant.

2. The learned Senior Counsel has submitted that the age of the victim has not been properly proved and therefore the application of POCSO Act itself would not be proper. He has also drawn the attention of this Court to Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and has contended that without there being any endeavour to have the documentary evidence so far as the age of the victim is concerned, the ossification test has been relied upon to determine the age.

3. On the other hand, Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam has submitted that the test is one of the prescribed modes under Section 94 of the said Act and therefore, there is no error in the application of the POCSO Act. She has also submitted that the age of the victim is 11 and is not on the verge of attaining the majority and therefore, there is no controversy at all regarding the age of the victim who is a minor.

4. Shri U. Choudhury, learned Legal Aid Counsel appearing for the respondent no. 2 has endorsed and supported the views forwarded by the learned Additional Public Prosecutor, Assam.

5. After considering the rival submissions, we are of the view that instead of expressing any opinion on the aforesaid issue raised at this stage of the consideration of the I.A., the said point would be answered, if raised, at the time of hearing of the appeal. The present recourse is taken, so as to avoid causing any prejudice to either of the parties in the adjudication of the main

appeal.

6. Accordingly, the present I.A. stands rejected.

**JUDGE**

**JUDGE**

**Comparing Assistant**