

GAHC040001492023



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

Case No. : Crl.A. 6/2023

1:Tadar Para
W/o Shri Tadar Tagi,
Presently resident of Anya Colony, Nirjuli, PO/PS Nirjuli, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and Anr.
Through Learned Public Prosecutor.

2:Chakpu Yaku
R/o Forest Colony
Pasighat
PO/PS Pasighat
East Siang District
Arunachal Pradesh

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : P P of AP

Linked Case : IA(Crl) 8/2023

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BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 18.04.2023

Heard Mr. L. Perme, learned counsel appearing for the applicant. Also heard Mr. V. Jamoh, learned counsel appearing for the respondent No. 2/Victim; and Mr. J. Tsering, learned Public Prosecutor for the State respondent/respondent No. 1.

This is an application under Section 389 (1) Cr.P.C for suspension/stay of the judgment and sentence dated 20.12.2022 and 22.12.2022 respectively passed in Sessions Case (Z) No. 27/2020 in connection with Koloriang P.S. Case No. 37/2014 under Section 376(2)(d)/376(2)(n)/376(c) IPC wherein, the present applicant was convicted under Section 376(2)(a)(iii) IPC and

sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 20,000/- (Rupees Twenty thousand) only, in default of payment of fine to undergo further simple imprisonment for 3(three) months.

It is submitted by the learned counsel for the applicant that there is reasonable ground that the appeal of the convict will succeed and even if the prosecution evidence is taken into totality, then the case may come under Section 376 IPC, but it is not a case under Section 376(2)(a)(iii) IPC, as convicted by the learned Sessions Judge. Moreso, it is submitted that the entire family members are dependent on the present convict/appellant. Further, the prosecutrix has already got married with the appellant and they are also blessed with a son and hence, in the absence of the present applicant, his entire family, along with the prosecutrix, will suffer from great financial hardship and during the entire proceeding of trial the accused was regularly appearing before the learned Court below and accordingly, prayed for suspension of the sentence and allow him to go on bail till the disposal of the connected appeal.

In this context, Mr. V. Jamoh, the learned counsel has submitted that he has appeared on behalf of the victim and has already filed affidavit before this Court stating that the victim had already got married with the convict and since 2019 they are living as husband and wife and they have a son who is presently studying in class II. It is further stated in the affidavit that the convicted

person born all expenses, including school expenses etc., for her son and hence, it is stated that if the convicted person is behind the bar, then there will be none to look after her family and her son.

On the other hand, Mr. J. Tsering, learned Public Prosecutor has submitted that in the present petition, file under Section 389 Cr.P.C, it is to be seen as to whether there is any chance for succeeding the appeal. But if the prosecution evidence is perused, it is seen that at present it cannot be said that there is every chance of succeeding in the appeal. However, it is submitted by the learned Public Prosecutor that in such circumstances the Hon'ble Supreme Court in cases passed in ***Criminal Appeal No. 456/2022*** as well as in ***Criminal Appeal No. 796/2022*** has expressed the view that the ground reality has to be considered in such petitions and the life of happy family should not be disturbed as it is a fact that appellant and the prosecutrix has already got married. The Hon'ble Supreme Court, in ***Criminal Appeal No. 796/2022***, has held as under:

“In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this court. This Court cannot shut its eyes to the ground reality and disturbed the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamil Nadu of the marriage of a girl with the maternal uncle.”

Further, it is submitted that this Court also in the case reported

in **2016 5 GauLJ 523 & 2016 4 GauLT 460 (Md. Jahirul Maulana @ Jahirul Islam Vs. State of Assam)** has also expressed the same view and in paragraph 9 of the said judgment, it has been held as under:

“9. The victim has become an adult in the meantime. She has been happily residing with the applicant as his legally married wife with a child in her lap. Under the given circumstances, the end of justice will demand that they should be left at their will and their otherwise happy marital life should not be allowed to be disturbed by the interfering clouds of litigations looming over their heads. In that view of the matter, since chances of conviction in the case is bleak in view of the compromise between the parties and marriage between the applicant and the opposite party No. 3, no useful purpose shall be served by dragging them to court anymore and to compel the witnesses to come at the expense of the valuable judicial time.”

Further, it is submitted by the learned Public Prosecutor for the State respondent that from the peculiar circumstances, the accused may be allow to go on bail or his sentence may be suspended till disposal of the appeal. But it cannot be held in total that there is a every chance of succeeding in the present appeal.

Considering the entire circumstances of this case, more particularly, the peculiar circumstances which is placed before this Court, and also considering the view expressed by the Hon’ble Apex Court in the above referred cases, I hereby allowed the present Interlocutory Application. Accordingly, the judgment and sentence

dated 20.12.2022 and 22.12.2022, respectively, passed in Sessions Case (Z) No. 27/2020 in connection with Koloriang P.S. Case No. 37/2014, under Section 376(2)(d)/376(2)(n)/376(C) IPC, is hereby suspended/stayed till the disposal of the connected appeal, being Crl. Appl. No. 06(AP)/2023 and the applicant is hereby allowed to go on bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned in Sessions Judge, Lower Subansiri/Kurung Kumey/Kra Daadi/Kamle District, Ziro, Arunachal Pradesh.

In terms of above observation, this Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant