

GAHC040002432023



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

IA(Crl) 11/2023

1:Yili Gadi
S/o Shri Tuyi Gadi

R/o Village Lama Deke

PO and PS Tirbin
District Leparada
Arunachal Pradesh
PIN 791101

VERSUS

1:THE STATE OF AP and Anr.
Represented by the Public Prosecutor.

2:Gome Gadi
S/o Late Jumgo Gadi

R/o Village Lama Deke

PO and PS Tirbin
District Leparada
Arunachal Pradesh
PIN 791101

Advocate for the Petitioner : Parswajyoti Das Nair
Advocate for the Respondent : P P of AP

BEFORE

HONBLE MRS. JUSTICE MITALI THAKURIA**ORDER****Date : 02-03-2023**

This is an application under Section 389 Cr.P.C. praying for bail/suspension of sentence of the accused person/appellant vide impugned, dated 20.12.2022 and order, dated 21.12.2022 passed in case No.BSR/SESS-11/2018 by the learned Addl. Sessions Judge, Western Sessions Division, Basar, Leparada District, Arunachal Pradesh, whereby, the applicant/appellant was sentenced to undergo imprisonment for 2 years with fine of Rs.5,000/- each for offence under Sections 460/326 IPC and also to undergo imprisonment for 3 months for the offence under Sections 323/427 IPC.

It is submitted by the learned counsel for the petitioner that there is every chances of succeeding in the connected appeal. Initially, the charge was framed against the applicant/applicant under Sections 451 /325 / 326 /307 /352 /427 /506 /34 IPC but subsequently, he was convicted under Section 460/326/427 IPC without altering the charge.

It is further submitted that as the applicant/appellant was acquitted or discharge from Section 451 IPC, he cannot be convicted under Section 460 IPC unless the charge is being framed. At the same time, the applicant/appellant was also initially charged under Section 325 IPC but he was subsequently convicted under Section 326 IPC, which is a higher offence in comparison to Section 325 IPC.

Further, it is submitted that the evidence of the victim as well as the

informant also reveals that they could not identify the persons who assaulted the victim. Further, it is submitted by the learned counsel for the applicant/appellant that the charge can be altered or modified at the time of passing judgment complying the provision of Section 222 Cr.P.C. in case if the person is punished in smaller section in which section he was charged earlier but in the instant case, the applicant/appellant was convicted under Sections 460/326/427 IPC and without giving any chance of hearing in the said offences and/ or without altering the charge.

In this regard, the learned counsel for the applicant/appellant has relied on a decision of the Hon'ble Apex Court in the case of Sangaraboina Sreenu-vs-State of A.P; reported in (1997) 5 SCC 348, wherein, the Hon'ble Apex Court expressed the view that the provision of Section 222 Cr.P.C. cannot be applied where the section charged is convicted are of distinct and different categories. Further, it is submitted by the learned counsel for the applicant/appellant that during the entire trial, the applicant/appellant was on bail and he was also granted with pre-arrest bail after his order of conviction, however, he could not appear on the date fixed by the learned Addl. Sessions Judge due to communication gap with his engaged counsel and further prayed that he is ready to abide by any condition as deem fit by this Court, if he is enlarge on bail.

Mr. T. Ete, learned Addl. PP submitted that the prayer for suspension of sentence in a petition filed under Section 389 Cr.P.C., the main criteria is to be decided as to whether there is a chance of succeeding in the appeal. Here, in this case, on perusal of the evidence as well as the other

witnesses, it is seen that none of the victim and the witnesses could identify the applicant/appellant or the persons who assaulted the victim at the time of the incident, therefore, there may be chances of succeeding in this appeal and accordingly, Mr. Ete did not raise any objection in the event of allowing the applicant/appellant to go on fresh bail.

In view of the discussions made hereinabove, I am of the considered opinion that this is a fit case where the applicant/appellant can be allowed to go on fresh bail. Accordingly, the applicant/appellant, namely, ***Shri Yili Gadi*** is allowed to go on fresh bail on furnishing a bail bond of Rs.20,000/- to the satisfaction of the learned Addl. District and Sessions Judge, Basar, Western Zone, Leparada District, Arunachal Pradesh till disposal of the connected appeal and the judgment, dated 20.12.2022 and the conviction order, dated 21.12.2022 is hereby suspended till disposal of the connected appeal.

In view of the above, this Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant