

GAHC010005372023



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

I.A.(Crl.)/17/2023

MD. RAMJAN SHEIKH
S/O SHEIKH MUSLEHUDDIN
VILL.- MORAN TILOI
P.S.- MORAN
DIST.- DIBRUGARH
ASSAM.

VERSUS

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

2:MOUSUMI RABHA
W/O ARUP LIKSON
VILL.- CHENGDHORA GAON
P.S.- BIHUBOR
DIST.- SIVASAGAR
ASSAM.

Advocate for : MR. P HAZARIKA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER

17.01.2023

Heard Mr. P.K. Munir, learned counsel for the applicant-appellant and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the respondent State of Assam.

2. The connected criminal appeal, Crl.A.[J] no. 8/2023 under Section 374[2], Code of Criminal Procedure, 1973 [CrPC] is directed against a judgment and order dated 19.12.2022 passed by the learned Additional Sessions Judge, Sivasagar, Assam [‘the trial court’] in Sessions Case no. 227[S-N]/2016. By the judgment and order dated 19.12.2022, the learned trial court has convicted the accused-applicant for the offences under Section 419, Indian Penal Code [IPC] and Section 493, IPC. For the offence under Section 493, IPC, the accused-applicant has been sentenced to undergo simple imprisonment for a period of 3 [three] years and to pay a fine of Rs. 1,000/- and in default of payment of fine, to undergo imprisonment for another 1 [one] month. For the offence under Section 419, IPC, the accused- applicant has been sentenced to pay a fine of Rs. 10,000/- and in default of payment of fine, to undergo simple imprisonment for another 6 [six] months.

3. The connected appeal has already been admitted for hearing today.

4. By the instant application under Section 389[2], Code of Criminal Procedure, 1973 [CrPC], the applicant-appellant has prayed for suspension of the sentence and his release on bail.

5. It has emerged from the materials on record that the applicant-appellant is in custody since 08.09.2022.

6. Mr. Munir, learned counsel for the applicant-appellant has submitted that the period alleged offence pertained to the year 2014 whereas the First Information Report [FIR] was lodged only on 27.09.2016. As per the allegation of the informant, she was rescued by her family members in the year 2014 itself. There was conspicuous silence on the part of the informant for a period of two years and it was only when the applicant-appellant was apprehended by some co-villagers, the FIR was lodged by the informant. It is further submitted by Mr. Munir that from the evidence on record, it can be seen that the informant was under no misconception that there was a lawful marriage between the applicant-appellant and the informant as the informant in her cross-examination, had stated that she did not go for divorce as no marriage was performed between the applicant-appellant and the

informant.

7. Having due regard to the materials on record and considering the projections made on behalf of the applicant-appellant, this Court is of the considered view that the applicant-appellant has made out a *prima facie* case for suspension of the sentence and his release on bail. Accordingly, it is provided that the execution of the sentence in respect of the applicant-appellant, passed by the learned trial court in Sessions Case no. 227[S-N]/2016, shall remain suspended till the disposal of the connected appeal and the applicant-appellant is allowed to be released on bail on furnishing a bail bond of Rs. 50,000/- with one local surety of the like amount to the satisfaction of the learned trial court.

8. The interlocutory application stands accordingly disposed of.

JUDGE

Comparing Assistant