

GAHC010020412023



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

I.A.(Crl.)/82/2023

ABDUL MOTLEB
S/O MD. HAJARAT ALI
VILL.- DAPARKAVITHA
P.S.- LAKHIPUR
DIST.- GOALPARA
T/ADD- C/O- HAIDAR ALI SARUMOTORIYA
P.S.- DISPUR.

VERSUS

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

2:REZA BORHANI
S/O FEREIDON BORHANI

R/O HOUSE NO. 8
1ST BYELANE
MUZZAFIRKHAN ROAD
ULUBARI
P.S.- PALTANBAZAR
KAMRUP (M)
GUWAHATI.

Advocate for : MR. A K BHUYAN

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 08-02-2023

1. Heard Mr. A.K. Bhuyan, learned counsel for the applicant Abdul Motleb who has filed an application under Section 389 Cr.P.C. with prayer for suspension of the sentence of the Judgment & Order dated 17.01.2023 convicting and sentencing the applicant under Section 10 of the POSCO Act to undergo imprisonment for 5 years and pay a fine of Rs. 5,000/- with default stipulation.

2. Heard Mr. B.B. Gogoi, learned Addl. P.P. for respondent No. 1.

3. I have considered the submissions at the Bar. The Judgment and Order dated 17.01.2023 in Special Sessions (POSCO) Case No. 40/2021 is impugned on the ground that no reasons were recorded while the applicant was not allowed the benefit of probation of Offenders Act.

4. It is submitted that the applicant is a permanent resident of Lakhipur, Goalpara and there is no chance of him evading arrest or absconding. The petitioner is the sole bread winner of the family.

5. The learned Addl. P.P has raised objection stating that the judgment was judicially passed by the Trial Court.

6. I have perused the copy of the judgment and order dated 17.01.2023 in Sessions Case No. 40/2021. It is submitted by the learned Addl. P.P. that the victim's evidence clearly reflects that the applicant deserves the punishment imposed upon him. Trial commenced on 21.02.2022 and charges were framed against the applicant. The copy of the Order dated 17.01.2023 in connection with Sessions Special Case No. 40/2021 annexed along with the application clearly depicts that the applicant was on bail and he was taken into custody on 17.01.2023, after he was found guilty of the offence

alleged against him.

7. The learned counsel for the applicant has also relied on the decision of the Hon'ble Supreme Court in *Jagjeet Singh and Others v. Ashish Mishra v. Monu and Another* 2022 SCC Online 453 wherein it has been observed that –

“24. A ‘victim’ within the meaning of Cr.PC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/she has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that ‘victim’ and ‘complainant/informant’ are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a ‘victim’, for even a stranger to the act of crime can be an ‘informant’, and similarly, a ‘victim’ need not be the complainant or informant of a felony.”

8. On the submission of the learned counsel for the applicant and relying on the decision of the Hon'ble Supreme Court in *Jagjeet Singh's case (supra)* the respondent No. 2 was not heard while considering the application for suspension of sentence and prayer for bail.

9. Reverting back to this case, it is held that I have perused the judgment and order impugned by the applicant. I have also perused the copies of the evidence of the prosecution witnesses PW-1, PW-2, PW-3 and PW-4. At this stage, I would not like to discuss the merits of the case. Delving into the evidence and discussing the merits of this case would be like disposing of the connected appeal altogether. After scrutinising the documents annexed along with the application, at this stage I am not inclined to allow the petition under Section 389 Cr.PC with prayer for bail and suspension of sentence. The appeal will be registered for early hearing as the

applicant is behind bars.

This matter is closed.

JUDGE

Comparing Assistant