

GAHC010021032023



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

Case No. : I.A.(Crl.)/58/2023

BILLAL HUSSAIN
S/O MUNNAF ALI, VILL.- ALOPATICHAR, P.S.- ALOPATICHAR, DIST.-
BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
TO BE REP. BY THE P.P., ASSAM.

2:MAMTAZ KHATUN
W/O JALAL UDDIN

VILL.- ALOPATI KHATIAMARI

P.S.- ALOPATICHAR

DIST.- BARPETA
PIN- 781127

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 23.02. 2023

Heard Mr. A. Ahmed, learned counsel for the applicant, Bilal Hussain. Also

heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State respondent No. 1.

2. This is an application under Section 389 Cr.P.C. with prayer for suspension of sentence and release of the applicant on bail during the pendency of this appeal.

3. The applicant is aggrieved by the impugned judgment and order dated 21.01.2023 and sentence dated 25.01.2023, passed by the learned Addl. Sessions Judge (FTC), Barpeta in Sessions Case No. 114/2020 convicting him under Section 448 IPC to suffer rigorous imprisonment for 1 (one) year and to pay fine of Rs. 1,000/-, with default clause, and under Sections 376/ 511 IPC to undergo rigorous imprisonment for 7 (seven) years and to pay fine of Rs. 10,000/- with default stipulation.

4. I have considered the submissions at the Bar.

5. It is submitted on behalf of the applicant that there is every possibility that the applicant would be acquitted after trial.

6. The statement of the informant recorded under Section 164 Cr.P.C. is not consistent with the FIR lodged by her. Thereafter, her evidence in chief was exaggerated.

7. Initially through FIR, the informant alleged that the applicant entered into her room through the window while she was sleeping in her room in the absence of other family members and attempted to commit rape on her. The applicant touched her inappropriately and she was awakened from her slumber and then she raised alarm. At that time, her brother-in-law Jiyad Ali came to her room and rescued her and the applicant left his chappal and ganji in the room.

8. In her statement under Section 164 Cr.P.C., she stated that while she was fast asleep, the applicant came to her room and then he laid down beside her and she was awakened and then the applicant gagged her and tried to strangulate her. At that time she raised alarm and her brother-in-law came to her room and flashed the torchlight under the bed, as the applicant hid under the bed. The applicant attempted to commit rape on her. Later, the informant testified in the court that the petitioner committed rape on her.

9. In fact, the brother-in-law also denied in the court in his testimony that he came inside the room of the informant at the time of incident.

10. The learned counsel for the applicant tried to project the contradictions of the testimony of the informant on the face of the record.

11. It is submitted that the victim's evidence does not inspire confidence. Her earlier evidence was not similar to her testimony in the court.

12. I have gone through the LCR and the impugned judgment and order. At

this juncture I am not getting into the merits of the evidence of the victim.

13. It has been held by the Hon'ble Supreme Court in a similar case of Angana and Another Vs. State of Rajasthan, reported in (2009) 3 SCC 767, that:-

“23. In the present case, the appellants were on bail during the pendency of the case before the Sessions Court. The Sessions Court has acquitted most of the accused persons after trial except the appellants. It is not the case of the other side, that, when the accused were on bail they had indulged themselves in any offence either under the provisions of the Penal Code or any other statute. It is also not the case of the prosecution that when the appellants where on bail they had either jumped the bail or were any way responsible for prolonging the proceedings before the Sessions Court, and it is also not the case of the other side that they would abscond and would not be available, to undergo the sentence if the appellate court affirms the order passed by the Sessions Court.”

14. In the instant case during trial the applicant was on pre-arrest bail.

15. I have also considered all aspects and I deem it appropriate and fit to allow the applicant to be enlarged on bail and to suspend the operation of the impugned judgment and order.

16. Accordingly, the applicant named above shall be released on bail on furnishing a bond of Rs. 30,000/- with one suitable surety of like amount to the satisfaction of the learned Addl. District and Sessions Judge (FTC), Barpeta and

the operation of the impugned judgment and order dated 21.01.2023 and sentence dated 25.01.2023, passed by the learned Addl. Sessions Judge (FTC), Barpeta in Sessions Case No. 114/2020 is hereby suspended till the disposal of the connected appeal.

17. The IA stands disposed of.

JUDGE

Comparing Assistant