

GAHC010041472023



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

Case No. : I.A.(CrI.)/155/2023

SAIFUL ISLAM AND 2 ORS.
S/O HASEM ALI,
VILL.- RONGDIA,
P.O.- HOWLI,
P.S.- GABORDHANA,
DIST.- BAKSA, BTAD, ASSAM, PIN- 781316.

2: NURUL ISLAM
S/O NATUB ALI
VILL.- RONGDIA

P.O.- HOWLI

P.S.- GABORDHANA

DIST.- BAKSA
BTAD
ASSAM
PIN- 781316.

3: NIZAMUDDIN
S/O NATUB ALI
VILL.- RONGDIA

P.O.- HOWLI

P.S.- GABORDHANA

DIST.- BAKSA
BTAD
ASSAM
PIN- 781316

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:REZIA KHATUN
W/O LATE AKBAR ALI TALUKDAR
THE DECEASED
R/O VILL-RONGDIA
P.O.-HOWLI
P.S.-GABORDHANA
DIST-BAKSA
BTAD
ASSAM
PIN-78131

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 26.06. 2023
(BY MICHAEL ZOTHANKHUMA, J)

Heard Mr. P.K. Munir, learned counsel for the applicants. Also heard Ms. S. Jahan, learned Addl. Public Prosecutor for the State respondent No. 1 and Mr. F. Amin, learned counsel appearing on behalf of Mr. Sarfraz Nawaz, learned counsel for the deceased/ victim. Also heard Mr. I.U. Choudhury, learned counsel for the respondent Nos. 2 to 9 except respondent No 6, who is being represented by Mr. M.U. Mahmud.

This is an application filed under Section 389 (1) Cr.P.C. for suspending the sentence passed by the Court of the Sessions Judge, Baksa in the impugned judgment dated 30.11.2022 passed in Sessions Case No. 139/2018.

The matter pertains to a fight between 2 groups of persons, which started due to the son of the deceased stealing a box of Chocolate from the shop of Hashem Ali. The learned counsel for the applicants submits that Hashem Ali, Kashem Ali and the applicants had earlier submitted I.A. (Crl.) No. 815/2022 before the learned single Judge of this Court, praying for suspension of the sentence and for bail. He further submits that while the prayer for suspension of the sentence in respect of the applicants had been impliedly rejected by the learned single Judge, vide order dated 08.02,2023, passed in I.A. (Crl.) No. 815/2022, bail was granted to Hashem Ali and Kashem Ali.

The learned Addl. PP and the counsel for the victim submit that the sentence should not be suspended and bail should not be allowed since there are eye witnesses to the crime.

We have heard the learned counsels for the parties.

On a perusal of the order dated 08.02.2023, passed by the learned single Judge of this Court in I.A. (Crl.) No. 815/2022, we find that the applicants herein had earlier prayed for suspension of the sentence and for bail, alongwith Hashem Ali and Kashem Ali. All the above 5 persons had been convicted by the learned trial Court under Section 304 Pt-II IPC and sentenced to undergo R.I. for 5 years each with fine of Rs. 1,000/- each, in default simple imprisonment for another 3 months. They were also convicted under Section 323/34 IPC and sentenced to undergo imprisonment for 6 months. They were to pay a fine of Rs. 500/-each on being convicted under Section 447/34 IPC. All the sentences were to run concurrently.

The learned single Judge allowed the prayer for suspension of the sentence against Hashem Ali and Kashem Ali on account of their age, which was

61 years and 59 years respectively.

Considering the fact that the applicants herein are similarly situated with Hashem Ali and Kashem Ali, except with regard to their actual age, we are of the view that they should also be granted bail. Accordingly, the sentence passed in pursuance to the impugned judgment dated 30.11.2022 by the learned trial court in Sessions Case No. 139/2018, is suspended and the applicants are accordingly granted bail on furnishing a bail bond of Rs. 50,000/- each, with one surety each of the like amount to the satisfaction of the learned trial Court

This application is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant