

GAHC010072402023



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

Case No. : I.A.(CrI.)/278/2023

ABED ALI
S/O LATE GADU MIYA
VILL.- JAGIRPAM
P.O.- SONKUCHI
P.S. AND DIST.- BARPETA
ASSAM
PIN- 781314.

VERSUS

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

Advocate for : MS N HASAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 02.05.2023

Heard Ms. N. Hasan, learned counsel for the applicant. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 389 of the Code of Criminal Procedure, 1973, praying for suspension of sentence and allowing the applicant to remain on previous/fresh bail till disposal of the connected appeal, being Crl. A.(J)/54/2023, which has been preferred against the judgment and order of conviction and sentence, dated 03.02.2023, passed by the learned Additional Sessions Judge, Barpeta, in Sessions Case No. 60/2018, whereby, the applicant/appellant was sentenced to undergo Rigorous Imprisonment for 3 (three) years for the offence punishable under Section 304 Part-II of the Indian Penal Code.

It is submitted by the learned counsel for the applicant, Ms. N. Hasan, that the applicant was on bail during the entire trial of this case and after his conviction order, he was allowed to remain on previous bail by the learned Additional Sessions Judge, Barpeta, on his filing of application after the pronouncement of his sentence. He is the only bread earner of his family and if he remains behind the bar, his entire family will suffer. Further it is submitted that all the witnesses have been examined by the prosecution side and all the witnesses are hearsay witnesses only and no eye witnesses could be examined by the prosecution, though the learned Additional Sessions Judge, Barpeta, passed the conviction order under Section 304 Part-II of the Indian Penal Code. Accordingly, the learned counsel for the applicant prayed to allow the applicant to remain on bail till disposal of the connected appeal.

In this context, the learned Additional Public Prosecutor, Mr. D. Das, has submitted that this is an statutory appeal and the conviction order is up to 3

(three) years and accordingly, he raised no objection in suspending the sentence and allowing the applicant to go on bail.

Considering the submissions of learned counsels of both sides, I have perused the petition and the documents placed on record and it reveals from the certified copy of the order passed by the learned Additional Sessions Judge, Barpeta, that the applicant was allowed to remain on previous bail till 02.03.2023 after pronouncement of the judgment on 02.02.2023. But, he remained absent without step on the date fixed by the learned Additional Sessions Judge, Barpeta, and hence, the warrant of arrest was issued against him vide orders dated 02.03.2023 & 13.03.2023. Thus, it is seen that though the applicant was allowed to remain on previous bail, yet he neither appeared before the learned Additional Sessions Judge, Barpeta, within time nor made any prayer for extension of his bail order.

However, considering the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor, I find it appropriate to allow this interlocutory application. Accordingly, the operation of the impugned judgment and order of conviction and sentence, dated 03.02.2023, passed by the learned Additional Sessions Judge, Barpeta, in Sessions Case No. 60/2018, stands stayed/ suspended till disposal of the appeal, being CrI. A.(J)/54/2023.

Further, the applicant is allowed to go on fresh bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Additional Sessions Judge, Barpeta.

In terms of above, this interlocutory application stands disposed.

JUDGE

Comparing Assistant