

GAHC010074022020



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

Case No. : I.A.(Crl.)/304/2020

SARSING TERON AND 9 ORS
S/O- LT. KHOYASING TERON
VILL- RONGCHINGRUM
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

2: ROBINSON TERON
S/O- LT. LUNCHE TERON
VILL- RONGCHETO
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

3: ENUSH TIMUNG
S/O- HONARI TIMUNG
VILL- RONGMONJIR
WARD NO. 5
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

4: BISWAJIT HANSE
S/O- LAKHI HANSE
R/O- IRRIGATION COLONY
DIPHU
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

5: JUNSING TERON

S/O- LT. HUMPHAR TERON
VILL- MATIKHULA
P.S. DOKMOKA
DIST.- KARBI ANGLONG
ASSAM
PIN- 782441

6: HITESSH RAVA
S/O- SRI GANESH RAVA
VILL- POULTRY FARM COLONT
DIPHU
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

7: MANGAL SING RONGPHAR
S/O- LT. KENDRASING RONGPHAR
VILL- TARALANGSO DHANSING RONGPHAR GAON
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

8: PHILIPSON TARO
S/O- LT. BAPUTY TARO
VILL- RANGCHEKLAM
WARD NO.4
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

9: BIKRAM TISSO
S/O- SRI SING TISSO
VILL- MENTILA
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM
PIN- 782460

10: SANJOY RONGPHAR
S/O- LT. SARKAM RONGPHAR
VILL- RONGMONJIR
WARD NO.7
P.S. DIPHU
DIST.- KARBI ANGLONG
ASSAM

PIN- 782460
VERSUS

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

2:HAREN CHANDRA SAIKIA
ADVOCATE
S/O- SRI CHANDRA KT. SAIKIA
DIPHU LAW COLLEGE COMPAUS
DIPHU- 782460
PRESENT ADDRESS- SRI HAREN CHANDRA SAIKIA
ADVOCATE
R/O- CHAKIAL GAON
P.O. CHAKIAL GAON
P.S. TITABOR
DIST.- JORHAT
ASSAM
PIN- 785632

Advocate for : MR. M SARANIA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

in CrI.A./135/2020

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ASSAM
PIN- 78246

VERSUS

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

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ADVOCATE
S/O- SRI CHANDRA KT. SAIKIA
DIPHU LAW COLLEGE COMPAUS
DIPHU- 782460
PRESENT ADDRESS- SRI HAREN CHANDRA SAIKIA
ADVOCATE
R/O- CHAKIAL GAON
P.O. CHAKIAL GAON
P.S. TITABOR
DIST.- JORHAT
ASSAM
PIN- 78563

Advocate for the Petitioner : MR. M SARANIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 08/12/2023
Suman Shyam, J

Heard Mr. B. K. Mahajan, learned counsel assisted by Mr. N.J. Das, learned counsel appearing

for the applicants. Also heard Ms. S.H. Bora, learned APP, Assam, who is present on behalf of the State. Mr. A. K. Hussain, learned counsel has appeared for the informant/respondent no. 2.

By the judgement dated 24/02/2020 and order of sentence dated 28/02/2020 passed by the learned Sessions Judge, Karbi Anglong at Diphu, in connection with Sessions Case No. 59/2018, the 10(ten) applicants herein and 2 (two) other accused persons were convicted under sections 302/341/323/147 of the Indian Penal Code (IPC) with the aid of section 149 of the IPC for committing the murder of Jhankar Saikia and sentenced to *inter alia* undergo rigorous imprisonment for life. Since then, they are in jail.

By filing the instant application under section 389 of the Cr.P.C., the 10(ten) applicants are seeking suspension of their jail sentence and also for releasing them on bail.

We find that by order dated 01/08/2023 passed in IA(CrI) 305/2020 arising out of Criminal Appeal No. 136/2020 preferred against the same judgement, a similar application for suspension of jail sentence and for granting bail to the two accused/appellants had been rejected by a Coordinate bench by recording reasons. It is in the backdrop of the above order dated 01/08/2023, that this Court is now called upon to consider as to whether, a different approach can be adopted in case of these ten applicants while considering their application for bail.

Mr. Mahajan has argued that PW-93, who is the informant and father of the victim, is a star witness in this case. The conviction of the accused persons is by and large based on the testimony of the said witness. PW-93 has deposed that the applicants had assaulted him. However, PW-93 is not the victim. According to Mr. Mahajan, the other witnesses, viz. PWs 108, 110 and 112, who were also projected as eye witnesses to the occurrence, did not implicate the applicants. Under the circumstances, submits Mr. Mahajan, this is a fit case for releasing the applicants on bail.

Ms. Bora, learned APP, Assam, on the other hand, has invited the attention of this Court to the evidence on record to submit that all the applicants herein are standing on equal footing as the two applicants in IA (CrI) 305/2020, whose application for bail has already been rejected by this Court by order dated 01/08/2023. Therefore, a different approach in case of the present applicants is not called for. It is also the submission of the learned APP that since the appeals are already fixed for final hearing, the bail application be rejected.

Similar is the submission of Mr. A.K. Hussain, learned counsel for the informant/respondent no. 2.

Mr. Mahajan, on the other hand, submits that the case of the at-least the applicant nos.1 & 5

stand on a completely different footing. Since there are a large number of witnesses, hence, hearing of the appeals would take a long time. Since his clients are in jail since last more than four years, hence, submits Mr. Mahajan, this is a fit case for considering their application for bail.

After analyzing the materials available on record, we find that the PW-93 is indeed a star witness. He had implicated the applicant No.1 Sarsing Teron and applicant no. 5 Junsing Teron for assaulting him but he has not ascribed any specific role to these applicants in assaulting the deceased.

It is no doubt correct that PW-93 had made a general statement saying that all the accused persons had assaulted his son but the names of the applicant nos. 1 & 5 had only been specifically taken to show that they had assaulted the informant. In other words, it *prima facie* appears that the evidence available on record in respect of the applicant nos. 1 & 5 is for assaulting the PW-93 and not the victim. Therefore, it is doubtful if there was common object on the part of the applicant nos. 1 & 5 to commit any offence u/s 302 of the IPC. The same cannot, however, be said for the other applicants. Since conviction of the applicants/accused persons in this case is with the assistance of section 149 of the IPC, hence, this aspect of the matter, in our considered opinion, would assume great significance and thus, would project that these two applicants are not placed in a similar footing along with the other applicants including the applicants in IA (Crl) 305/2020, whose bail prayer had been rejected.

Assuming that the applicant nos. 1 & 5 had assaulted the informant/PW-93, even then, that by itself cannot be a ground to convict these two applicants under section 302 of the IPC with the assistance of section 149 of the IPC for committing the murder of deceased Jhankar Saikia in the absence of common object. Whether the other evidence brought on record would be sufficient to sustain the conviction of these two applicants is a matter that would call for deeper consideration by the Court at the time of final hearing of the appeal. However, there is some doubt in our mind as to the involvement of the applicant nos. 1 & 5 in assaulting the victim. We, therefore, find force in the submission of Mr. Mahajan that the applicant nos. 1 & 5 stand in a different footing and deserve to be released on bail.

For the reasons stated herein above, we hereby direct that the applicant no. 1 *Sarsing Teron* and applicant no. 5 *Junsing Teron* be released on bail on furnishing a bond of Rs. 30,000/- (Rupees thirty thousand) each with one local surety each of like nature to the satisfaction of the learned Sessions Judge, Karbi Anglong at Diphu.

The learned Sessions Judge would also be at liberty to impose any other additional condition

for releasing these two applicants on bail, as may be deemed fit and proper, in the facts and circumstances of the case.

In so far as the prayer for bail made by the applicant nos. 2 to 4 and 6 to 10, their prayer stands rejected.

Before parting with the record, we make it clear that the observations made herein above are purely for the purpose of disposal of the bail application and the same shall not have any bearing in the outcome of the pending appeals.

IA stands disposed of, accordingly.

JUDGE

JUDGE

sukhamay

Comparing Assistant