

GAHC010117902023



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

Case No. : I.A.(CrI.)/464/2023

L. SANA MEITEI
S/O LATE MANA MEITEI,
KHONGHAMPAT AWANG VEIKAI, KHONGHAMPAT, MANTRIPUKHURI,
IMPHAL (WEST), LAMSHANG, MANIPUR, PIN- 795002

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR D K BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 18-07-2023

(M. Zothankhuma, J)

Mr. DK Bhattacharyya, learned counsel for the applicant submits that he has been engaged only to take up this interlocutory application, i.e., I.A.(CrI.) 464/2023. He submits that Mrs. Dipanjali Borpujari is the Legal Aid Counsel, who will be taking up the case of the applicant/appellant at the time of hearing

of the main appeal, i.e., CrI.A.(J) 34/2023. He also submits that paper book has been received by Mrs. Dipanjali Borpujari.

2. Ms. J Paul, learned counsel for the appellant in the analogous appeal, i.e., CrI.A. 10/2023 submits that she will be taking a copy of the paper book from the Registry during the course of the day.

3. Ms. S Jahan, learned Additional Public Prosecutor submits that she has received a copy of the paper book.

4. This application relates to the impugned judgment dated 26.05.2022 and sentence order dated 30.05.2022, passed by the court of the learned Sessions Judge-cum-Special Judge, Morigaon in NDPS Case No. 03/2020, by which the appellants in both the above appeals have been convicted under Section 22(C) read with Section 29 of the NDPS Act. They have been sentenced to undergo rigorous imprisonment for 14 (fourteen) years with a fine of Rs. 1,00,000/- each, in default to undergo simple imprisonment for 3 (three) years.

5. This application made under Section 389 Cr.PC is for suspending the sentence and releasing the applicant herein on bail, on the ground that he is HIV positive. He has relied upon the Advisory on the policy for the treatment of terminally ill prisoners/inmates issued by the Government of India dated 13.08.2010 and the order dated 11.04.2022, passed by the Supreme Court of India in Special Leave to Appeal (CrI.) No. 2225/2022, Bhawani Singh –vs- State of Rajasthan for releasing him on bail.

6. Ms. S Jahan, learned Additional Public Prosecutor, on the other hand submits that as paper book is ready, the matter can be heard expeditiously and the bail application can be rejected at this stage. She further submits that in terms of the Medical Report dated 17.07.2023 issued by the Medical & Health

Officer, District Jail, Morigaon, the applicant is suffering from HIV/HIV infection, piles, skin disease with allergy. Accordingly, he is given medicine but he has not completely recovered. She also submits that though there is no separate room for HIV patients in the jail, a separate room is under construction for HIV patients and 80% of the work has been completed, as on date.

7. We have heard the learned counsels for the parties.

8. The order passed by the Supreme Court of India in **Bhawani Singh** (supra) is with regard to an HIV prisoner wherein it has been held that an HIV prisoner is entitled to be given the benefit under Section 34(2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, for expeditious disposal of his appeal. The Supreme Court also had accordingly directed the High Court to take appropriate steps to dispose of the appeal and in the meantime granted bail to the petitioner therein.

9. Keeping the above facts in mind, we are of the view that instead of deciding the bail application, an expeditious hearing of the appeal should be made. On the prayer of the counsels for the applicant/appellants, list the CrI.A. (J) 34/2023 and CrI.A.10/2023 for **final hearing** on **03.08.2023**. It may be clarified here that though this Court has informed the counsels that we are ready to hear the matters today or tomorrow itself, the counsels for the applicant/appellants have prayed for a date not earlier than 03.08.2023. Accordingly, in that view of the matter, the above mentioned appeals be listed for final hearing on 3rd August, 2023. We do not find a case for suspending the sentence. We are of the view that bail should not be granted to the applicant herein, as the appeals are going to be heard expeditiously on the date fixed by the counsels for the applicant/appellants.

10. The interlocutory application is accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant