

GAHC010122932023



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

Case No. : I.A.(CrI.)/501/2023

ABDUR ROFIQUE AND ANR.
S/O LATE ABDUL GOFUR MOROL, VILL. AND P.O.- HATIPUKHURI, P.S.-
RUPAHIHAT, P.S.- RUPAHIHATI, DIST.- NAGAON, ASSAM.

2: ANUWAR HUSSAIN
S/O ABDUR ROFIQUE

VILL. AND P.O.- HATIPUKHURI

P.S.- RUPAHIHAT

P.S.- RUPAHIHATI
DIST.- NAGAON
ASSAM

VERSUS

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

Advocate for the Petitioner : MR. S K TALUKDAR

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./211/2023

ABDUR ROFIQUE AND ANR.
S/O LATE ABDUL GOFUR MOROL

VILL. AND P.O.- HATIPUKHURI

P.S.- RUPAHIHAT

P.S.- RUPAHIHATI
DIST.- NAGAON
ASSAM.

2: ANUWAR HUSSAIN
S/O ABDUR ROFIQUE

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P.S.- RUPAHIHAT

P.S.- RUPAHIHATI
DIST.- NAGAON
ASSAM.
VERSUS

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

2:MD SHARIFUZ ZAMAN
S/O MD LUTFUR RAHMAN

VILL. AND P.O.- GHEUWA CHOLSOLI

DIST.- NAGAON
ASSAM.

Advocate for : MR. S K TALUKDAR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 14.08.2023

Heard Mr. S. K. Talukdar, learned counsel for the applicants/appellants.
Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

This anticipatory bail application has been preferred under Section 389 of Code of Criminal Procedure, 1973, by the present applicants/appellants, namely, (1) Abdur Rofique, and (2) Anuwar Hussain.

The present applicants were convicted under Section 326/34 and were sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- and in default, of payment of fine, further undergo simple imprisonment for three months by a judgment dated 23.05.2023 passed in Sessions (T-1) Case No. 117 (N)/2014 passed by the Court of learned Sessions Judge, Nagaon.

The appellants have impugned the said judgment by filing criminal appeal, which has been registered as Criminal Appeal No. 211/2023. The Sessions (T-1) Case No. 117(N)/2014 was registered on the basis of an FIR, wherein it was alleged that on 26.08.2013, at about 5.00PM both the appellants grabbed one Jiabur Rahman when he went to see as to how ploughing was being done in the fields, both the appellants after grabbing him assaulted him with a knife and cut his penis in an attempt to commit his murdered.

Learned counsel for the applicants/appellants has submitted that the learned Sessions Judge had while coming to the finding of guilt of the present applicants/appellants have failed to consider the inconsistency and contradictions between the testimony of the PW-6 and PW-1, the only eye witnesses on which the prosecution relied on.

It is also submitted by the learned counsel for the applicants/appellants that the prosecution side as failed to prove that the injury sustained by the injured (PW-6) was of grievous nature, as the injury which was found does not qualify the definition of grievous injury as provided in grievous hurt as provided

in any of the 8 kind of injuries mentioned in Section 320 of the Indian Penal Code.

It is also submitted that the prosecution side has also failed to give any evidence that the weapon used for commission of the alleged was a dangerous weapon.

Learned counsel for the applicants/appellants has submitted that there is every possibility that after hearing of the appeal, the conviction under Section 326/34 of the Indian Penal Code against the present applicants/appellants may be set aside or else at the best, they may be convicted under a lesser offence under Section 323 of the Indian Penal Code.

Learned counsel for the applicants/appellants has submitted that under the circumstances of this case, considering the nature of evidence on which the finding of the conviction has arrived at by the learned Trial Court, there is every possibility that the present applicants/appellants would be acquitted under Section 326/34 of the Indian Penal Code and considering the time which may ultimately be required for completion of hearing in the connected appeal, the learned counsel for the applicants/appellants has prayed for allowing the present applicants/appellants to be released on bail during pendency of the appeal.

On the other hand, learned Additional Public Prosecutor vehemently opposed the grant of bail and suspension of sentence of the present applicants/appellants on the grant that there are clinching evidence against the present applicants/appellants and Trial Court correctly arrived at the finding of guilt of the present applicants/appellants under Section 326/34 of the Indian Penal Code.

It is submitted that the evidence of PW-6 is corroborated by the evidence of PW-1 (eye witness) and PW-10 (Medical Officer) and the manner in which the alleged offence was committed and the nature of injury which has been caused to the injured person does not justify release of the present applicants/appellants on bail during the pendency of appeal.

I have considered the submissions made by learned counsel for both sides and have perused the materials available on record carefully.

Though, while considering an application under Section 389 of the Code of Criminal Procedure, 1973, this Court should not re-appreciate the evidence which is available on record and a detail elaboration of evidence at this stage should be avoided inasmuch as same may have an effect on the right of the parties during the course of hearing of this appeal and may have an impact on the final outcome of this appeal, however, considering the nature of the injury sustained by the injured person and the manner in which the alleged offence was committed as well as considering the testimony of prosecution witnesses available on record, including, the fact that the weapon which was used for commission of offence was a knife and the injuries which was caused to the injured shows that the penis of injured was sectioned was at the base and the part of scrotum skin was avulsed, this Court is of the considered opinion that the contentions raised by learned counsel for the applicants/appellants can be considered only during the final in-depth hearing of the appeal and at this stage, without making any observation on merit of the case, in either way, no error which is apparent appears to be there in the finding of the learned trial Court justifying the release of applicants/appellants at on bail during pendency of appeal.

Hence, the prayer for suspension of sentence and release of

applicants/appellants on bail during the pendency of appeal is hereby rejected.

The applicants/appellants shall, however, be at liberty to approach this Court by filing an interlocutory application praying for expeditious hearing and disposal of the corrected appeal in this case.

JUDGE

Comparing Assistant