

GAHC010127592023



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

Case No. : I.A.(CrI.)/494/2023

AKTAR ALI
S/O SAHER UDDIN SK.,
VILL.- KHUDIMARI PART- II, P.S.- GAURIPUR, DIST.- DHUBRI, ASSAM.

VERSUS

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

2:MUST. KASEMA BIBI
W/O RAHIMUDDIN SK.
R/O VILL-KHUDIMARI PART-II
P.S.-GAURIPUR
DIST- DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR. A RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18.11.2023

1. Heard Mr. A. Rahman, learned counsel for the applicant/appellant.
Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

2. This interlocutory application under Section 389 of the Code of Criminal Procedure, 1973 has been filed by the applicant, namely, *Aktar Ali*

praying for suspension of sentence and his release on bail during the pendency of connected appeal which has been registered as Criminal Appeal No. 184/2023. By preferring the said appeal, the present applicant has impugned the judgment and order dated 29.04.2023 passed by learned Assistant Sessions Judge, Dhubri in Sessions Case No. 341/2018 whereby the present applicant has been convicted under Sections 370(2)/34 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.50,000/- (Rupees Fifty Thousand) and in default of payment of fine to further undergo simple imprisonment for three months.

3. The facts relevant for consideration of the instant interlocutory application, in brief, are as follows:-

(i) On 08.07.2007, one Mustt. Kasema Bibi had lodged an FIR before the Officer-in-Charge of Gauripur Police Station, *inter alia*, alleging that 3(three) numbers of accused persons named in the FIR, namely, 1. Lokman Ali 2. Aktar Ali, and 3. Monga Sk. had abducted the daughter of the first informant, namely, Momina Khatun with an intention to sell her. On receipt of the said FIR, the Officer-in-Charge of Gauripur Police Station has registered Gauripur P.S. Case No. 217/2007 under Sections 366/34 of the Indian Penal Code and initiated the investigation. After completion of the investigation, charge-sheet was laid against all the three named accused of the FIR showing Monga Sk as an absconder and Lokman Ali and Aktar Ali as in custody at the time of laying of the charge-sheet.

(ii) The case against the Lokman Ali was filed and the present applicant, namely, Aktar Ali faced the trial. Initially, the charge under Sections 366/34 of the Indian Penal Code was framed against the present applicant, however, during the pendency of the trial, the charge was

altered under Section 370(2)/34 of the Indian Penal Code. The appellant pleaded not guilty to the said charges and claimed to be tried.

(iii) During the trial, the prosecution side examined six prosecution witnesses, the applicant, during his examination under Section 313 of the Code of Criminal Procedure, 1973 denied the incriminating evidence adduced against him by the prosecution witnesses and pleaded his innocence. However, he declined to adduce any evidence in defence. Ultimately, after completion of the trial, the present applicant was found guilty of offence under Sections 370(2)/34 of the Indian Penal Code by the Trial Court and he was sentenced in the manner as already described hereinbefore.

4. Learned counsel for the applicant/appellant has submitted that the evidence on record does not justify the conviction of the present applicant under Sections 370(2)/34 of the Indian Penal Code. It is submitted by learned counsel for the applicant/appellant that the Trial Court ignored the fact that though the incident had occurred on 28th June, 2007, however, the FIR was lodged after much delay on 08th July, 2007 and no plausible cause has been shown for delayed lodging of the FIR which itself creates doubt regarding the story of the prosecution side.

5. Learned counsel for the applicant/appellant has also submitted that the Trial Court convicted the present applicant solely on the basis of the testimony of the victim i.e., PW-2 and have not considered the evidence of other witnesses which was available on record. It is further submitted by learned counsel for the applicant/appellant that while assessing the evidence of PW-2, learned Trial Court also failed to consider that the statement of PW-2 which was

recorded under Section 164 of the Code of Criminal Procedure, 1973 during the course of investigation did not corroborate the testimony of PW-2 which she had deposed during the trial.

6. It is also submitted by learned counsel for the applicant that the Investigating Officer of the case did not properly investigate the case as from the evidence of PW-2, it appears that one "*Nalbari Bhabí*" was the mastermind in kidnapping the victim girl, however, the Investigating Officer could not collect any evidence against the said "*Nalbari Bhabí*" neither the Investigating Officer collected any evidence regarding confinement of the victim in the private hotel and made any effort to verify the statement of the victim wherein she had claimed to have escaped through the window of the aforesaid hotel.

7. Learned counsel for the applicant/appellant has further submitted that there is every possibility of the present applicant getting a verdict of acquittal in the pending appeal and, hence, he has prayed for allowing the present applicant to be released on bail during the pendency of the appeal after suspending the sentence imposed on him by the learned Trial Court.

8. On the other hand, learned Additional Public Prosecutor has vehemently opposed the suspension of sentence during the pendency of the connected appeal and has submitted that the present applicant has been convicted after a full trial after consideration of the evidence against him which was adduced during the trial.

9. In the instant case, the appellant has been sentenced for a period of seven years which is a sentence for a limited duration and *in* "***Bhagwam Rama Shinde Gosai and Ors –Vs- State of Gujarat***" reported in "***(1999) 4 SCC 421***" wherein the Hon'ble Apex Court has observed as follows:-

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

10. In the instant case also, the applicant has filed the statutory appeal under Section 374 of the Code of Criminal Procedure, 1973 and considering the pendency of criminal appeals in this Court, there is an unlikelihood that in normal course, the connected appeal would be disposed of expeditiously and, hence, there is likelihood of the connected appeal coming up for hearing at a very belated stage which would prejudice the rights of the present applicant, if

ultimately he is found to be innocent in the connected appeal, hence, this Court is of considered opinion that the this is a fit case where the sentence imposed on the present applicant/appellant by the impugned judgment is required to be suspended during the pendency of the connected appeal.

11. In view of the above discussions, the sentence imposed on the present applicant by the impugned judgment and order dated 29.04.2023 passed by learned Assistant Sessions Judge, Dhubri in Sessions Case No. 341/2018 is hereby suspended during the pendency of the criminal Appeal No. 184/2023 and the applicant, namely, *Aktar Ali* is allowed to go on bail of Rs.50,000/- (Rupees Fifty Thousand) with one surety of like amount to the satisfaction of learned Assistant Sessions Judge, Dhubri, subject to the following conditions:-

1. The applicant/appellant shall not leave the State of Assam during the pendency of the Criminal Appeal No. 184/2023 without prior leave of the learned Assistant Sessions Judge, Dhubri;
2. The applicant/appellant shall not directly or indirectly make any inducement, threat or promise to the victim girl in any manner during the pendency of Criminal Appeal No. 184/2023;
3. The applicant/appellant shall not commit any offence similar to that for which he has been convicted in Sessions Case No. 341/2018.

12. With the above observations, this interlocutory application is hereby disposed of.

JUDGE