

GAHC010138712023



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

Case No. : I.A.(CrI.)/616/2023

UDAY BRAHMA
S/O BILAS BRAHMA, RESIDENT OF VILLAGE- BHOWRAGURI, UNDER
BARBARI POLICE STATION IN THE DISTRICT OF BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SRI MANIKANTA BRAHMA
S/O BANGAL BRAHMA
RESIDENT OF VILLAGE- BHOORAGURI
SUBUNKHATA
BARBARI POLICE STATION IN THE DISTRICT OF BAKSA
ASSAM.(INFORMANT

Advocate for the Petitioner : MRS. P B BORDOLOI (LEGAL-AID-COUNSEL)

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 07-12-2023

Suman Shyam, J

Heard Ms. P.B. Bordoloi, learned legal aid counsel appearing for the applicant. Also heard Ms. S.H. Bora, learned Addl. P.P. Assam appearing for the State.

By the judgment dated 24-03-2023 passed by the learned Sessions Judge, Baksa at Mushalpur in Sessions Case No. 87/2021, the applicant Sri Uday Brahma was convicted under Section 302 IPC for committing the murder of his mother Hafang Brahma and sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs. 1000/-. Since then, he is in jail.

By filing the instant application arising out of the connected Crl. Appeal, the applicant has prayed for suspension of his jail sentence and also for his release on bail during the pendency of the connected jail appeal.

Ms. Bordoloi, learned legal aid counsel has invited the attention of this Court to the materials on record to submit that the case of the prosecution is entirely based on circumstantial evidence but the charge could not be proved. She submits that the learned trial court has convicted the applicant on the basis of extra-judicial confession and also by taking note of the admission of guilt made by the applicant while recording his statement under Section 313 Cr.P.C. Contending that extra-judicial confession is a weak piece of evidence and statement of the accused made under Section 313 Cr.P.C. cannot be a basis of conviction, Ms. Bordoloi submits that there is strong possibility that the conviction of the appellant would be set aside by this Court after hearing the appeal and he would be acquitted. On such ground, the applicant's counsel has prayed for release of the applicant on bail.

Ms. Bora, learned Addl. P.P. Assam, on the other hand, submits that conviction of the applicant is not based on his admission of guilt made while recording the statement under

Section 313 Cr.P.C. but on the basis of the extra-judicial confession brought on record by the PWs-2, 3, 4 and 6 who have corroborated the version given by each other. Ms. Bora submits that the learned trial court has rightly relied upon the evidence brought on record to convict the accused and there is no perversity in the findings recorded by the learned court below. Contending that the charge brought against the appellant/ applicant has been established beyond reasonable doubt, the learned Addl. P.P. Assam has prayed for dismissal of the bail application.

Law is well settled that conviction of the accused cannot be based merely on admission of guilt made while recording his statement under Section 313 Cr.P.C. In the present case, while recording the statement of the accused under Section 313 Cr.P.C. he has categorically admitted of having killed his mother Hafang Brahma with a stone. However, from a reading of the impugned judgment, we find that his conviction is not entirely based on the statement recorded under Section 313 Cr.P.C. Rather, it appears that the learned trial court has relied upon the evidence on record including the extra-judicial confession made by the accused before the villagers which was brought on record by the PWs- 2, 3, 4 and 6. From the evidence of PWs. 2, 3, 4 and 6, we find that their evidence is not only consistent but is also free from any contradictions. All these witnesses, most of whom are independent witnesses, have deposed in one voice and have corroborated the testimony of each other. There is nothing on record to indicate that these witnesses have falsely implicated the applicant. Whether the extra-judicial confession, was voluntary and truthful in nature or not is a matter which will call for deeper analysis by the Court, which would be possible at the time of final hearing of the appeal. However, having regard to the facts and circumstances of the case, we are of the *prima facie* view that this is not a fit case to grant bail.

As such, the bail prayer stands rejected.

Since the LCR has already been received, office to expedite preparation of paper book.

An attempt may be made to post the appeal for final hearing in the 3rd week of March, 2024.

Registry to take steps accordingly.

Before parting with the record, we make it clear that the observations made hereinabove are *prima facie* in nature and have been made purely for the limited purpose of disposal of the bail application. The same shall not have any bearing at the stage of final hearing of the appeal.

I.A. stands disposed of.

JUDGE

JUDGE

GS

Comparing Assistant