

GAHC010138852022



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

Case No. : I.A.(Crl.)/350/2022

MD. GULZAR HUSSAIN @ GULJAR HUSSAIN
S/O AINUL HUSSAIN RESIDENT OF VILLAGE BHUKUAMARI
AAMBAGAN
PS ULUANI
DIST NAGAON
ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:MUSST. SUKHINA KHATOON
W/O MD. KHAIRUL ISLAM

RESIDENT OF VILLAGE BHUKUAMARI
AAMBAGAN
PS ULUANI
DIST NAGAON
ASSAM.

3:MUSSTT. SARIFA BEGUM
D/O MD. KHAIRUL ISLAM
RESIDENT OF VILLAGE BHUKUAMARI
AAMBAGAN
PS ULUANI
DIST NAGAON
ASSAM.

Advocate for : MR. B CHOWDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

09.08.2023

Heard Mr. B. Chowdhury, learned counsel for the applicant. Also heard Mr. R.J. Barua, , learned Additional Public Prosecutor for the State and Mr. S.C. Biswas, learned counsel for the respondent nos.2 & 3.

2. This is an application under Section 389 Cr.P.C. for granting bail to the applicant and suspending sentence during pendency of criminal appeal in connection with the impugned judgment dated 24.06.2022 passed by the learned Additional Sessions Judge FTC, Nagaon in Sessions (T-2) Case No.112/2011, by which the applicant was convicted under Section 376 IPC and sentenced him to undergo rigorous imprisonment for a period of 10 (ten) years and to pay a fine of Rs.1,00,000/-, in default to undergo simple rigorous imprisonment for 6 (six) months.

3. The learned counsel for the applicant submits that since the date of judgment the applicant has been languishing in jail custody. The learned counsel further submits that there are lots of contradictions in the evidence of the witnesses and there is every possibility of acquittal of the applicant in the case. Considering these aspect, the applicant be released on bail during pendency of the appeal.

4. On the other hand, Mr. R.J. Baruah, learned Additional Public prosecutor has raised objection in granting bail to the applicant during pendency of the

appeal as he submits that the applicant has been convicted for 10 years under Section 376 IPC. It is further submitted by the learned Additional Public Prosecutor that the statement of the victim is supported by the medical evidence as the Doctor found some injuries on the private parts of the victim. So bail may not be granted at this stage.

5. Mr. S.C. Biswas, learned counsel for the respondent nos.2 & 3 submits that the respondent no.3 got married with another person. At this stage, respondent nos.2 & 3 have no objection if the applicant is released on bail for the sake of married life of the respondent no.3.

6. In view of the above, accordingly, the accused-petitioner, named above, shall be released on bail suspending the sentence during appeal in connection with Sessions (T-2) Case No.112/2011, under Section 376 IPC, subject to the following conditions :

(i) The applicant shall furnish a bail bond of Rs.25,000/- with two suitable sureties of the like amount to the satisfaction of the learned Additional Sessions Judge FTC, Nagaon.

(ii) The applicant shall appear to the investigating officer of Uluani Police Station, District-Nagaon under which he resides and provides a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switch on all the times;

(iii) If the applicant has a passport, he shall surrender the same to the court of learned Additional Sessions Judge FTC, Nagaon and shall not travel out of the country without prior permission of the learned trial court;

- (iv) The applicant shall not contact nor visit nor offer any inducement, threat or promise to any of the persons acquainted with the case;
- (v) More specifically, the applicant shall neither contact nor interact whether directly or indirectly with the victim or her family members any manner whatsoever;
- (vi) The applicant shall also not visit the locality in which the victim resides, and
- (vii) The applicant shall not indulge in any kind of unlawful act that would prejudice the pending proceeding.

7. Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.

8. In view of above, I/A stands disposed of.

JUDGE

Comparing Assistant