

GAHC010171472022



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

Case No. : I.A.(Crl.)/393/2022

AYUB KHAN
S/O LATE MOFIZ KHAN VILLAGE NO. 2 ISLAMPUR PO NO. 4 DHARMPUR
PS LALUK DIST LAKHIMPUR ASSAM 784160

VERSUS

THE STATE OF ASSAM AND ANR .
REPRESENTED BY THE PP
ASSAM
2:MD. SIRAJUL HOQUE
S/O LATE JIKIRIYA ALI
RESIDENT OF MORONGI CHARIALI
SAROR GAON
PS AND DIST GOLAGHAT
ASSAM
785621

Advocate for applicant : K U Ahmed
Advocate for the State : Ms. S. Jahan, Addl. P.P.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

27.09.2023

(M. Zothankhuma, J)

1. Heard Mr. K.U. Ahmed, learned counsel for the applicant/appellant Ayub Khan. Ms. S. Jahan, learned Additional Public Prosecutor appears for the State.

2. This application has been filed under Section 389 Cr.P.C for suspending the sentence passed by the learned Sessions Judge, Golaghat vide sentence order dated 24.06.2022, pertaining to the judgment dated 18.06.2022 in Sessions Case No.58/2023, by which the applicant Ayub Khan has been convicted under Section 379/34 IPC along with co-accused Rafiqul Islam, who was also convicted and sentenced on the same charge. Besides the above two persons, the co-accused Ibrahim Ali was convicted under Sections 302/34 and 201/34 IPC, vide the same judgment.
3. The applicant Ayub Khan and Rafiqul Islam were sentenced to undergo 3 (three) years rigorous imprisonment with a fine of Rs.20,000/- each, in default rigorous imprisonment for three month under Section 379/34 IPC.
4. The learned Trial Court thereafter passed an order dated 27.06.2022 in Sessions Case No.58/2013, wherein it granted bail to the applicant Ayub Khan and Rafiqul Islam and fixed 24.07.2022 for submission of the stay order of this Court, in respect of the sentence order dated 24.06.2022 passed by the learned Trial Court. The same implies that bail was granted till 24.06.2022 by the learned Trial Court.
5. The applicant Ayub Khan filed Criminal Appeal No.164/2022 challenging his conviction and also filed I.A.(Crl.) No. 393/2022 before the learned Single Judge of this Court, praying for suspending the sentence and grant of bail under Section 389 Cr.P.C. The learned Single Judge of this Court, vide order dated 01.08.2022 passed in I.A.(Crl.) No.393/2022, gave interim bail to the applicant till 05.09.2022 and by order dated 04.11.2022 and 05.01.2023, the interim bail was extended by the learned Single Judge.
6. Though the learned Single Judge has not specifically stated that the

sentence dated 24.06.2022 passed by the learned Trial Court was suspended while granting bail, an inference can be drawn that the learned Single Judge has suspended the sentence passed against the applicant Ayub Khan in the judgment dated 18.06.2022 passed in Sessions Case No.58/2013, in terms of Section 389(1) Cr.P.C. The applicant Ayub Khan having been on bail in view of the order of bail given by the learned Trial Court and by the learned Single Judge, since July, 2022, there is nothing to be decide in the present application, as the applicant has been granted bail by the learned Single Judge till final disposal of the appeal, as per the order dated 04.11.2022 passed in Criminal Appeal No.164/2022.

7. The I.A.(Crl.) is accordingly allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant