

GAHC010153982022



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

Case No. : I.A.(CrI.)/481/2022

BRAJESWAR BORDOLOI AND 4 ORS.
S/O LATE SURATH BORDOLOI, VILLAGE KALIAJARI, PS MORIGAON, DIST
MORIGAON, ASSAM 782105

2: SUSHIL BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

3: SHANTI BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

4: RANJAN BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

5: JAYANTA BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON

ASSAM 78210

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM.

2:SRI KATIRAM BANGTHAI
S/O LATE ASHOK BANGTHAI
RESIDENT OF KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 78210

Advocate for the Petitioner : MR A ATREYA

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./204/2022

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ASSAM 782105
VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PP
ASSAM

2: KATIRAM BANGTHAI
S/O LATE ASHOK BANGTHAI

RESIDENT OF KALIYAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

Advocate for : MR A ATREYA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

24.02.2023

(Malasri Nandi, J)

Heard Mr. D.K. Bhattacharyya, learned counsel for the appellants/applicants. Also heard Ms. S. Jahan, learned Additional Public Prosecutor appearing for the State/respondent No.1.

2. The present application has been filed by the accused/applicants under Section 389(2) of Cr.P.C. for suspension of conviction and sentence vide

judgment and order dated 02.06.2022 and 08.06.2022 respectively passed by the learned Sessions Judge, Morigaon in Sessions Case No. 24/2015, convicting the accused/applicants Nos. 1, 3 and 4 namely, Brajeswar Bordoloi, Shanti Bordoloi and Ranjan Bordoloi under Section 302 I.P.C. and sentencing them to undergo rigorous imprisonment for life and pay a fine of Rs.50,000/- each, in default a further period of 1 year of simple imprisonment. Further accused/applicant No. 3 Shanti Bordoloi was convicted under Section 324 I.P.C. and sentenced to undergo rigorous imprisonment for 1 year and also convicting the accused/applicants Nos. 1, 2, 3, 4 and 5 namely, Brajeswar Bordoloi, Sushil Bordoloi, Shanti Bordoloi, Ranjan Bordoloi and Jayanta Bordoloi were convicted under Section 143 I.P.C. and sentencing them to undergo simple imprisonment for 30 days respectively. As the applicant No. 2, Sushil Bordoloi and applicant No. 5, Jayanta Bordoloi have already completed the period of sentence at the time of trial, they were not taken into custody.

3. Mr. Bhattacharyya, learned counsel for the applicants submits that the applicant No.1 is a senior citizen aged about 72 years. He has many age related diseases and he is now suffering from hypertension, chest pain and abdominal pain and he is also a diabetic patient. Therefore, considering the health condition of the applicant No.1, his bail prayer may be considered and his sentence may be suspended during pendency of the appeal only on medical ground.

4. He further submits that during trial of the case, the applicants were on bail and they had never misused their liberties or defaulted in appearing before the trial court nor they have violated any of the bail conditions imposed upon them during the entire course of the trial.

5. On the other hand, Ms. Jahan, learned Additional Public Prosecutor

for the State has submitted that as per evidence of the witnesses, the applicant No.1 Brajeswar Bordoloi dealt a blow on the head of the deceased with a spade which is a vital part of the body and the medical officer also opined that the cause of death of the deceased was due to cardio-respiratory failure following Haemo-Pneumo-thorax and head injury which was caused by sharp and heavy weapon. It is also submitted that as per report of the medical officer, the accused/applicant No.1 is suffering from high blood pressure, vertigo, migrainous headache which are not serious ailments as such, his bail prayer may not be considered by suspending his sentence.

6. We have considered the submissions made by the learned counsel for the parties and we have also perused the evidence of witnesses.

7. In the case of [Kishori Lal v. Rupa](#), (2004) 7 SCC 638, the Hon'ble Supreme Court has indicated the factors that require to be considered by the courts while granting benefit under [Section 389](#) Cr.P.C. in cases involving serious offences like murder, etc. which is reproduced as follows-

" [Section 389](#) of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. One of the essential ingredients of [Section 389](#) is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or the order appealed against. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere

fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail.”

8. In the case of [Preet Pal Singh v. State of Uttar Pradesh](#), it was held that in case of post conviction bail by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial.

9. Even though detailed examination of the merits of the case may not be required by courts while considering an application for bail but, at the same time, exercise of jurisdiction has to be based on well settled principles and in a judicious manner and not as a matter of course as held by the Court in the case of [Chaman Lal v. State of U.P. and Anr.](#) (2004) vol. 7 SCC 36.

10. In view of above, there need to be compelling reasons for suspension of sentence and grant of bail under [Section 389 Cr.P.C.](#) It is to be ascertained if there is patent infirmity in order of conviction or other cogent reasons exist for release on bail.

11. Reverting back to the facts of the present case, the allegation against the accused/applicants is that they assaulted the deceased with dao, axe and spade. P.W.2 is the injured eye witness. According to him, the applicant No.1 i.e. Brajeswar Bordoloi dealt a spade blow on the head of the deceased. The medical officer also supported the fact that the deceased sustained injuries on his head which is the cause of his death. The learned trial court has duly dealt with the detailed contentions raised on behalf of the accused and reached the conclusion that they have committed murder of the deceased.

12. It may be reiterated that the Appellate court, at the stage of

suspension of sentence and release on bail till disposal of appeal, has to examine if there is any patent infirmity in the order of conviction that renders the conviction prima facie erroneous. The evidence is not to be re-assessed or re-analyzed to suspend the execution of the sentence. The detailed observations on merits of the case are not called for, at this stage lest it prejudices the case of the applicant but the matter has been seen in the light of the settled principles of law.

13. Learned counsel for the applicants has prayed that the applicant No.1 may be released on bail during trial on medical ground only. As per medical report submitted by the Medical & Health Officer, District Jail, Morigaon, it appears that on examination of the applicant No.1, he found the applicant No.1 was having blood pressure, vertigo, migrainous headache. His blood pressure was 190/100 on the date of examination i.e. 20.02.2023 and he has also joint pain which are not serious in nature.

14. Having regard to the evidence on record and detailed reasons recorded by the learned trial court, we are of the considered opinion that no ground of suspension of sentence till disposal of the appeal are made out in the present application.

15. The application is accordingly dismissed. The observation herein have been made are prima facie only for the purpose of consideration of application for suspension of sentence only.

16. The I/A stands disposed of accordingly.

JUDGE

JUDGE