

GAHC010160492021



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

Case No. : I.A.(Crl.)/402/2021

SRI DIPAK KALITA
S/O- LATE KHAGEN KALITA, VILL.- SADILAPUR, P.S. PALASHBARI, DIST.-
KAMRUP(R).

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY P.P., ASSAM.

2:SMTI. MAMONI DAS
W/O- DHIREN DAS
VILL.- SADILAPUR
P.O. AND P.S. PALASHBARI
DIST.- KAMRUP(R)
PIN- 781128

Advocate for the Petitioner : MR. M H ANSARI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

20.02.2023

Heard Mr. A. Ahmed, learned counsel representing the applicant as well as Mr. P. Borthakur, learned Additional Public Prosecutor, Assam.

This is an application under section 389 of the CrPC in respect of Special Sessions (POCSO) Case No. 15/2014.

On 20.05.2019, the petitioner was convicted under section 6 of the POCSO Act in Special Sessions (POCSO) Case No. 15/2014. He has already completed more than 4 (four) years in judicial custody.

The period of detention is taken as a ground while praying for releasing the petitioner on bail.

Mr. Ahmed relied upon a decision of this court that was delivered in Habibur Rahman vs. State of Assam reported in MANU/GH/0518/2001. The para 3 of the said judgment is quoted as under:

“3. However, the main plank of Mr. Mazumdar's argument is the delay in disposal of the appeal. Which according to him, entitles the accused-Appellants to be released on bail in view of Article 21 of the Constitution-Mr. Mazumdar points out that the instant appeal was admitted as far back as 18.8.2000, more than a year ago; and the paper book has not been prepared as yet. In Anurag Baitha's case MANU/BH/0028/1987 : 1987 Cri.L.J. 2037, the accused-Appellant was convicted under Sections 302 / 34 / 333 IPC read with Section 27 of the Arms Act and was sentenced to life imprisonment on the capital charge. In appeal, the High Court refused bail to him. More than a year thereafter he renewed his prayer for bail. Noticing the two competing principles, namely, one which is applied when the prayed for bail is refused on merits; and the other arising on account of the 'long incarceration of the accused and the inevitable delay in hearing of his appeal, the matter was referred to a larger bench. The Full Bench held:

Article 21 does not stop short at the end of the trial but continues to extend its protective shield even after the post-conviction stage. Equally it has to be

borne in mind that in the event of later acquittal by the appellate court the long incarceration in jail during the pendency of the appeals is inherently incompenstable in terms of money.

Even assuming that Section 389 does not envisage the questions of delay, the applicability of Article 21 and the right of speedy trial and expeditious hearing of substantive appeals cannot be possibly excluded from this area.

Barring exceptions the reasonable period of time for the hearing of substantive appeals on capital charges pending in the High Court must be broadly one year. Once this is so fixed, a convict would become entitled to claim bail on the ground of the delay in hearing the appeal itself unless there are cogent grounds for acting otherwise.

To the following horrendous capital crimes (categorisation is not exhaustive) which are shocking to the conscience of society, the general rule stated above shall not apply:

- (a) Multiple and mass murders on caste and tribal considerations.-
- (b) Dacoity coupled with murder.
- (c) Rape with murder.
- (d) Bride Burning.
- (e) Terrorist crime.
- (f) Daylight bank robbery; abduction for ransom followed by murder; indiscriminate use of firearms and bombs in murders disturbing public order."

I have given my anxious consideration to the submission made by the learned counsels for both the sides.

In this case, the victim has stated that the applicant had committed the 'bad acts' upon her whereas the medical evidence does not support the said claim. Therefore, I have decided to accept the plea taken by the applicant. The appeal is still pending and no certainty can be given as to when the appeal will be disposed of.

Therefore, the bail application of the applicant is allowed. He is allowed to go on bail of Rs.30,000/- with one surety of like amount to the satisfaction of the learned Special Judge, Kamrup, Amingaon.

The IA stands disposed of.

JUDGE

Comparing Assistant