

GAHC010171472022



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

Case No. : I.A.(CrI.)/473/2022

IBRAHIM ALI
S/O ABDUL GAFUR,
RESIDENT OF VILLAGE NO. 3, ISLAMPUR VILLAGE, PS LALUK, DIST
LAKHIMPUR, ASASM 784160

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MD. SIRAJUL HOQUE
S/O LATE JAKIRA AHMED

RESIDENT OF SARAR GAON
PO MORONGI CHARIALI
PS AND DIST GOLAGHAT
ASSAM 78570

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./200/2022

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S/O ABDUL GAFUR

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2:MD. SIRAJUL HOQUE
S/O LATE JAKIRA AHMED

RESIDENT OF SARAR GAON
PO MORONGI CHARIALI
PS AND DIST GOLAGHAT
ASSAM 785702

Advocate for : MR. M KALITA

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 16/11/2023
Suman Shyam, J

Heard Mr.A. Ahmed, learned counsel for the applicant/appellant. We have also heard Ms. B. Bhuyan, learned senior counsel and APP, Assam, appearing on behalf of the State.

By the impugned judgement and order dated 18/06/2022 passed by the learned Sessions Judge, Golaghat, in connection with Sessions case No. 58/2013, the applicant/appellant viz. Md. Ibrahim Ali was convicted under sections 302/34 of the IPC for committing the murder of the deceased Salimul Haque and *inter-alia* sentenced to undergo rigorous imprisonment of life. The applicant is presently in jail.

By filing the IA, the applicant has prayed for suspension of the jail sentence and for his release on bail.

It appears that the deceased is the son of the informant, who was the owner-cum-driver of a Indica vehicle, which was apparently hired by the main accused Molow Das along with his accomplices. Later on, the vehicle was taken away after killing the driver and sold at Dimapur. It further appears that the main accused Molow Das had made a confession before the Police wherein, he has implicated the applicant in commission of the crime. That apart, there is extra-judicial confession by Molow Das implicating his accomplices. It is, however, to be noted herein that Molow Das had died during investigation of the case and, therefore, he was never made to face trial.

We also find from the record that the conviction of the applicant under section 302 IPC is with the assistance of section 34 of the IPC. However, it appears that there is no finding recorded by the learned trial Court as regards existence of common intent on the part of the applicant to commit the crime.

Ms. B. Bhuyan, learned APP, Assam, has strongly objected to the prayer for grant of bail made by the applicant by contending that having regard to the peculiar facts and circumstances of the case, the learned trial Court has given due weightage to the evidence available on record while convicting the applicant and therefore, this is not a fit case for grant of bail.

It is settled position of law that any confession made before the Police Officer would not be admissible in evidence. Extra-judicial confession is also treated to be a weak piece of evidence. Whether the evidence adduced by the prosecution in totality, in the ultimate analysis, would be sufficient to sustain the conviction of the applicant, is a matter which can be ascertained only after a detail hearing of the appeal, which process would not be possible

today since the learned counsel for the appellant in CrI. Appeal No. 184/2022 is not ready to argue the connected appeal on merit. However, having regard to the facts and circumstances of the case and after going through the materials available on record, we are of the *prima facie* opinion that a strong case has been made out by the applicant for his release on bail.

We, accordingly, direct that the applicant *Ibrahim Ali* be forthwith released on bail on furnishing a bond of Rs. 30,000/- (Rupees thirty thousand) and one local surety of the like amount to the satisfaction of the learned District and Sessions Judge, Golaghat.

We also make it clear that before release of the applicant, it would be open for the learned District and Sessions Judge, Golaghat to impose any other additional condition for his release on bail, as may be deemed fit and proper, under the law as well as the facts and circumstances of the case.

We further make it clear that the observations made herein above are tentative in nature and the same have been made purely for consideration of the prayer made in the IA. Such observations would not have any bearing during the final hearing of the appeal.

With the above observation, the IA stands disposed of.

JUDGE

JUDGE

sukhamay

Comparing Assistant