

GAHC010185722023



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

Case No. : I.A.(CrI.)/730/2023

RAJIB PEGU,
S/O GANESH PEGU, R/O KAMREK GAON, P.S PANIGAON, PIN 78705,2 DIST.
LAKHIMPUR, ASSAM

VERSUS

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

2:AJOY MORANG
S/O KHAGESWAR MORANG R/O VILL. KAMREK P.O. PANIGAON DIST.
LAKHIMPUR PIN 787052 ASSA

Advocate for the Petitioner : MS. D BORGHAIN

Advocate for the Respondent : PP, A P

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 23.08.2023
(K.R. Surana, J)

Heard Ms. D. Borgohain, learned counsel for the applicant. Also
heard Ms. S. Jahan, learned Addl. P.P. for the State.

2. By filing this interlocutory application under Section 389(2) CrPC, the applicant, who has been convicted vide judgment and order of conviction dated 15.06.2023 passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur in Sessions Case no. 197(NL)/ 2017 by which he was sentenced to undergo RI for life under section 302 IPC and with fine with default stipulation, has prayed for interim suspension of sentence and/ or bail for 15(fifteen) days for performing the last rituals of his mother, who had expired on 20.08.2023. It may be mentioned that the learned counsel for the applicant has fairly submitted that as on today, four days has already gone by and therefore, it is prayed that the applicant may be granted interim bail for ten days.

3. It has been submitted that the applicant is the eldest son of his deceased mother and as per the *Mising* custom, the applicant was required to perform the ritual of "*Tiloni*" and thereafter, on each day up to the 12th day, eldest son is required to do the ceremony of going to the place where his mother was cremated for offering "*pinda*" and on 12th day "*urum-apin*" or "*sharadh*" ceremony is performed.

4. On 21.08.2023, when this matter was moved, this Court observed a discrepancy in the death certificate issued by the village Headman dated 20.08.2023, annexed to this application, showing different address of the mother of the applicant. By filing an affidavit on 22.08.2023, the applicant has clarified that his mother lived in the original village home which is 20 Km away from the house of the applicant and that the applicant had shifted to a different address.

5. In support of the prayer for bail, the learned counsel for the

applicant has cited the decision of High Court of Uttarakhand in the case of *Raju@ Rajkumar Vs. State of Uttarakhand, WP(Crl) No. 383/2018* decided on 24.10.2018.

6. The learned APP has opposed the prayer for bail for a long duration, but it is submitted that in view of the death of his mother, the Court may permit him to visit his ancestral home to conduct the last rites, the day of "*urum-apin*" or "*sharadh*" ceremony, but under police escort.

7. Considered the case cited by the learned counsel for the applicant. The facts in the said case is distinguishable because in the said case, the convict had moved an application before the District Magistrate for custody parole which was rejected and therefore, on refusal of custody parole for 6(six) hours, the Court in the criminal writ petition, directed that compensation was to be paid to the convict. In the State of Assam, there is an enactment called "The Good Conduct Prisoners' Probational Release Act, 1938" by which power is vested upon the Government to release the convict by licence on conditions imposed by it. The said provision has not been invoked by the applicant.

8. In this case, the applicant has been sentenced to undergo RI for life for committing offence under Section 302 IPC. Therefore, the Court is disinclined to grant interim bail for 10(ten) days to the applicant for performing daily "*pinda*". However, the Court is of the considered opinion that in order to allow the applicant to perform the "*urum-apin*" or "*sharadh*" ceremony of his deceased mother, the applicant would be entitled to visit his mother's village for 48(forty eight) hours in armed police escort.

9. As per this application, the mother of the applicant had died on 20.08.2023, and as per the additional affidavit filed on 22.08.2023, the "*urum-apin*" or "*sharadh*" ceremony of his deceased mother would be on 12th day.

Therefore, the Superintendent of District Jail, Lakhimpur where the applicant is presently lodged shall make an arrangement that the applicant, namely, Rajib Pegu is taken to his mother's village home at Village- Boralimuria, P.O.- Kambong, Mouza- Kamalabari, P.S.- Gormur, Panchayat- Lohit Thabolu Makuma & District- Majuli under armed police escort from 30.08.2023 for 48(forty eight) hours up to 31.08.2023 for performing the "*urum-apin*" or "*sharadh*" ceremony of his deceased mother and thereafter, to escort him back to the jail.

10. It is further clarified that in the event the "*urum-apin*" or "*sharadh*" ceremony of the deceased mother of the applicant falls on any other day, this order shall be read as if the 48(forty eight) hours time would commence from the date preceding the actual date of "*urum-apin*" or "*sharadh*" ceremony.

11. This interlocutory application stands partly allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant