

GAHC010194532022



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

Case No. : I.A.(CrI.)/559/2022

NOMAL HAZARIKA
S/O LATE TUNIRAM HAZARIKA
R/O KHARKATI BONIA GAON
P.O. AND P.S.- JENGRAIMUKH
DIST.- MAJULI
ASSAM
PIN- 785105.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PUBLIC PROSECUTOR.

2:GENDHELA BHARALI
S/O LT. RASHAB BHARALI
VILL.- KHARKATI BONIA GAON
P.O. AND P.S.- JENGRAIMUKH
DIST.- MAJULI
ASSAM
PIN- 785105.

Advocate for : MR A DAS

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

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

ORDER

Date : 09.10.2023

(M. Thakuria, J)

Heard Mr. W. R. Medhi, learned counsel for the applicant. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 389 (1) of the Code of Criminal Procedure praying for suspension of sentence dated 18.08.2022, passed by the learned Sessions Judge, Majuli, in Sessions Case No. 150(JM)/2018, whereby, the present applicant was convicted under Section 302 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 20,000/- and in default to undergo Simple Imprisonment for 3 (three) months.

It is submitted by the learned counsel for the petitioner that there is no evidence at all to prove a case under Section 302 of the Indian Penal Code against the present applicant. Most of the prosecution witnesses are the interested witnesses and during cross-examination also, there are several contradictions in the evidence of the witnesses. Further the P.Ws.- 3, 4, 5, 6, 12 & 13 are declared hostile by the prosecution and the prosecution also could not extract anything by cross-examining those hostile witnesses. More so, the other witnesses also could not establish the fact that the accused committed murder of the deceased and thus, there is every chance of succeeding in the appeal. Further it is submitted that the accused was on bail during the entire trial of the

case and he never violated any condition of the bail and there is no chance of absconding if the applicant is allowed to go on bail. He is the only bread earner of the family and in his absence, his entire family is facing financial hardship. Accordingly, it is submitted by the learned counsel for the petitioner that it is fit case where the accused can be allowed to go on bail by suspending the sentence imposed on him.

In this context, the learned Additional Public Prosecutor, Ms. S. Jahan, has submitted that it is a fact that several witnesses are declared hostile by the prosecution and there is no direct or convincing evidence against the present applicant. However, it cannot be denied that the death was homicidal in nature. Apart from medical evidence, there are other witnesses also who support the prosecution case and there is enough evidence leading to the guilt of the applicant. Accordingly, it is submitted that this is not a fit case where the accused can be granted bail by suspending the sentence under Section 389 Cr.P.C.

After hearing the submission made by the learned counsels for both sides, we have perused the case record and it is seen that out of 20 (twenty) numbers of prosecution witnesses, only few prosecution witnesses support the case of the prosecution and several prosecution witnesses are already declared hostile by the prosecution. It is a fact that there is no direct evidence to the incident. However, the medical evidence and some of the witnesses supports the prosecution version and as per the medical evidence, it is a case which is homicidal in nature. But, considering the entire material in the case record, we find that it is a fit case where the accused can be allowed to go on bail till disposal of the appeal by suspending the sentence imposed on him.

Accordingly, the operation of the impugned sentence passed by the

learned Sessions Judge, Majuli, in Sessions Case No. 150(JM)/2018, vide judgment and order dated 18.08.2022, stands suspended till disposal of the connected appeal, being CrI. A./233/2022.

Further, the applicant is hereby allowed to go on bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Sessions Judge, Majuli.

In terms of above, this interlocutory application stands disposed.

JUDGE

JUDGE

Comparing Assistant