

GAHC010201482023



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

Case No. : I.A.(Crl.)/849/2023

KAMAL DIHINGIA
S/O LATE BISWADHAR DIHINGIA, RESIDENT OF NOHAJAR,
KONWARGAON, PS BORBORUAH, DIST DIBRUGARH, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A C BURAGOHAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 22.09.2023
(K.R. Surana, J)

Heard Mr. A.C. Buragohain, learned senior counsel, assisted by Mr. R. Singh, learned counsel for the applicant. Also heard Ms. S. Jahan, learned APP appearing for the State.

2. By filing this application under section 389 Cr.P.C., the applicant, who is a 75 years aged person has prayed for suspension of sentence ordered vide judgment and sentence dated 07.02.2023, passed by the learned Additional Sessions Judge (FTC), Dibrugarh in Sessions Case No. 158/2017, thereby convicting the applicant for committing offence punishable under section 302/448 IPC and sentencing him to undergo life imprisonment along with fine and default stipulation.

3. The learned senior counsel for the applicant has submitted that the applicant is suffering from various ailments, which includes dysphagia, degenerative lumbar spondylosis, multiple disc lesions, chronic kidney diseases for last 6 (six) months and as per the medical opinion of orthopaedic surgeon on 25.01.2023, the applicant is suffering from "degen spine osteoporosis" and as per the opinion of the radiologist, the applicant is also suffering from "chronic cystitis".

4. Later on, during the period from 23.06.2023 to 26.06.2023, the applicant was treated in the Assam Medical College and Hospital, Dibrugarh and as per the doctors opinion dated 16.06.2023, the applicant was suffering from Oesophagitis and Pangastritis. It is submitted that pursuant to the Court taking notice of the said medical condition of the applicant by order dated 23.08.2023 passed in the connected appeal, had directed medical examination of the applicant. It is submitted that the learned APP has produced the medical documents of the applicant, which now diagnosis him with "low back ache" and has been advised various investigation including Ultrasonography, UGI Endoscopy and also for orthopaedic consultation. Accordingly, on the ground of medical condition of the application, the learned senior counsel has prayed for releasing the applicant on bail or to suspend his sentence.

5. The learned APP has opposed the prayer made in this application.
6. As per the current status of the medical examination of the applicant and as per the opinion of the doctors of Assam Medical College and Hospital, Dibrugarh, who had examined the applicant on 20.09.2023 have opined that the applicant is suffering from low back ache and there is loss of appetite. Rest there is no history of dysphagia, melena and every parameters appears to be normal. Nonetheless, considering the age of the applicant, who is stated to be 75 years and his medical condition as appears from the prescription and/or patient record of Assam Medical College and Hospital, Dibrugarh, the Court is inclined to provide that the Superintendent of Central Jail, Dibrugarh shall have the health condition of the applicant monitored in every 2 (two) weeks and a copy of the report of medical condition of the applicant is to be provided to his family members. To facilitate the same, the Court is inclined to provide that one family member of the applicant has to provide his phone number having whatsapp to the Superintendent of Central Jail, Dibrugarh and/or email address, by which the report of medical examination can be transmitted.
7. For the aforesaid purpose, the family members of the applicant is permitted to produce a certified copy of this order before the Superintendent of Central Jail, Dibrugarh.
8. Considering that the applicant is suffering from low back ache with no other medical complications and also considering the fact that the applicant has been awarded rigorous imprisonment for life, the Court is disinclined to release the applicant by suspending the sentence.
9. Nonetheless, considering the age of the applicant, separate order has been passed in the connected appeal for out of turn hearing.

10. The medical report of the applicant is kept as a part of record.
11. This interlocutory application stands disposed of.

JUDGE

JUDGE

Comparing Assistant