

GAHC010202532023



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

Case No. : I.A.(CrI.)/854/2023

HANIF ALI AND 3 ORS.
S/O BURHAN ALI, VILL.- MEDHIRTARY, P.O.- KADONG, P.S.- BARPETA,
DIST.- BARPETA, ASSAM.

2: HASAN ALI
S/O BURHAN ALI
VILL.- MEDHIRTARY
P.O.- KADONG
P.S.- BARPETA
DIST.- BARPETA
ASSAM.

3: HUSSAIN ALI
S/O BURHAN ALI
VILL.- MEDHIRTARY
P.O.- KADONG
P.S.- BARPETA
DIST.- BARPETA
ASSAM.

4: RINKU MALLIK @ JAMINUL HASSAN MALIK
S/O SHAHJAHAN MALIK
VILL.- JAHURPAM
P.S.- BARPETA
DIST.- BARPETA
ASSAM

VERSUS

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

2:FUL KHATUN
W/O LATE KASHER ALI
VILL.- JAHARPAM
P.O.- JAHARPAM
P.S.- BARPETA
DIST.- BARPETA
ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

18.10.2023

Heard Mr. R. Ali, learned counsel for the applicants and Mr. D. Das, learned Addl. P.P. for the State respondent.

2. In this interlocutory application, under Section 389 of the Cr.P.C., the applicants namely, **Hanif Ali; Hasan Ali; Hussain Ali; and Rinku Mallik @ Jaminul Hassan Malik**, has prayed for suspension of the sentence handed down upon them, vide impugned judgment and order dated 23.08.2023, passed by the learned Addl. Sessions Judge [FTC], Barpeta in Sessions Case No. 72/2022.

3. It is to be noted here that vide impugned judgment and order dated 23.08.2023, the learned court below has convicted the applicants under Sections 147/448/325/149 of the IPC and sentenced them to undergo rigorous imprisonment for 1 year each and to pay a fine of Rs. 1,000/- each, with default

stipulation under Section 147/149 of the IPC and also sentenced to undergo simple imprisonment for a period of 3 months each and to pay a fine of Rs. 500/- with default stipulation under Sections 447/149 of the IPC and further sentenced to undergo rigorous imprisonment for a period of 5 years each and to pay a fine of Rs. 5,000/- each, with default stipulation under Sections 325/149 of the IPC.

4. Mr. Ali, learned counsel for the applicants submits that the applicants were all along bail during the trial and that the punishment so imposed by the learned court below is only 5 years and admittedly there is a land dispute between the parties and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Das, learned Addl. P.P. submits that admittedly there is land dispute between the parties and the maximum punishment imposed is only five years.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned judgment and order dated 23.08.2023.

7. It appears that there is substance in the submission of Mr. Ali, learned counsel for the applicant. Admittedly there is land dispute between the parties and the learned court below, in its judgment and order dated 23.08.2023, in Paragraph No. 13, has clearly indicated the same.

8. Having considered above and also considering the submission of learned counsel for both the parties, this Court is inclined to allow this interlocutory application.

10. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- each, with one surety of like amount to the satisfaction of the learned **Addl.**

Sessions Judge [FTC], Barpeta in **Sessions Case No. 72/2022**, the applicants shall be released on bail, till disposal of the criminal appeal, being Criminal Appeal No. 336/2023.

11. In terms of above, this IA stands disposed of.

Comparing Assistant

JUDGE