

GAHC010221902022



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

Case No. : I.A.(Crl.)/684/2022

BILLAL HUSSAIN
S/O SAHADAT ALI, VILLAGE TINTILA, PS AND DIST KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:BADSHA MANDAL
S/O LATE IMAN ALI MANDAL

VILLAGE TINTILA
PS AND DIST KOKRAJHAR
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./288/2022

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S/O SAHADAT ALI

VILLAGE TINTILA
PS AND DIST KOKRAJHAR
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ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 08-02-2023

(Malasri Nandi, J)

Heard Mr. A. Ahmed, learned counsel for the applicant. Also heard Ms. S. Jahan, learned Additional Public Prosecutor appearing for the State.

2. The applicant has preferred an application under Section 389 Cr.P.C., 1973 for suspension of sentence and to release him on bail during pendency of the appeal against the judgment and order dated 26.09.2022, passed by the learned Sessions Judge, Kokrajhar in Sessions Case No. 54/2017, whereby the accused/applicant has been convicted under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default stipulation.

3. The learned counsel for the applicant has contended that this is a case

based on circumstantial evidence and the accused was not present at home when the wife of the applicant was found dead in the morning hours. He has further submitted that it is well settled that unless chain of circumstances is complete and each link in the chain is proved beyond all reasonable doubt, no accused can be convicted thereupon. He has also contended that in a case based on circumstantial evidence, the case against the accused is to be proved beyond all reasonable doubts without leaving any link which may be compatible with his innocence. It is also submitted that in a case of this nature, there must be a chain of circumstances and no conviction can be based on a single circumstance.

4. The learned counsel for the applicant also argued that the applicant has been awarded life imprisonment but during trial he was on bail and he had maintained good conduct throughout; which is a relevant factor during the period of interim suspension; he has never misused the liberty; the cases are piling up in High Court and there is no likelihood of regular hearing of the appeal in near future.

In support of his submission, learned counsel has placed reliance on a case law- *2022 LiveLaw(SC)503 Sabitri Samantaray vs State of Odisha*.

5. On the other hand, the learned Additional Public Prosecutor for the State has submitted that the applicant is not entitled to be released on bail after suspension of sentence only on the ground that the appeal will take some time to be heard and there is no misuse of liberty by the accused during trial when he was on jail.

6. We have considered the submissions of learned counsel for the parties.

In the case of [*Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)* (2008) 5 SCC 230], it was held that-

“while considering the application for suspension of sentence, seriousness of the offence; nature of accusation; the gravity of the offence and the normal practice is not to suspend the sentence. The fact that accused was on bail during trial and he has not misused the liberty does not per-se warrant suspension of sentence. Moreover, where the appeal is likely to be heard in measurable distance of time, the suspension of sentence is not to be allowed.”

7. In the present case, it appears that the deceased who is the wife of the applicant was found dead inside the house of the applicant. Though, the applicant took the plea of alibi that was not considered by the learned trial court. It also appears that the judgment was delivered on 26.09.2022 and since then, the applicant has been detained in jail. The appeal was filed on 04.11.2022 and not even one year has been passed from the date when the appeal has filed. The applicant has been convicted for a serious offence of murder.

8. We have given our anxious consideration to the rival submissions of the parties and we have also gone through the judgment on which the sentence has been imposed upon the applicant. We are not inclined to suspend the sentence awarded to the present applicant at this stage. Therefore, the present application stands rejected accordingly.

9. The I/A stands disposed of.

JUDGE

JUDGE

Comparing Assistant