

GAHC010227192023



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

Case No. : Crl.Rev.P./442/2023

BURHAN UDDIN LASKAR
S/O LATE KARIM UDDIN LASKAR
VILL- BAWARTHAL, P.S. ALGAPUR, P.O. KALIBARI BAZAR,
DIST. HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(Crl.)/976/2023

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S/O LATE KARIM UDDIN LASKAR
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ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP
ASSAM

Advocate for : MR. A M BARBHUIYA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 16.11.2023

Heard Mr. A.M. Barthakur, learned counsel for the applicant. Also heard Mr. R.J. Baruah, learned Public Prosecutor for the State/respondent.

2. This is an application under Section 389 Cr.P.C. praying for allowing the applicant to go on previous bail or fresh bail till disposal of the connected criminal revision petition suspending the impugned judgment and order dated 21.09.2023 passed by the learned Sessions Judge, Hailakandi in Criminal Appeal No. 23/2023.

3. It has been submitted by the learned counsel for the applicant that learned Assistant Sessions Judge, Hailakandi passed the impugned judgment and order dated 20.07.2023 in Sessions Case No. 11/2023 whereby the applicant was convicted under Section 448/376 IPC and sentenced him to undergo simple imprisonment for 6(six)

months under Section 448 of IPC and also sentenced him to undergo rigorous imprisonment for 7(seven) years with a fine of Rs.5,000/- in default, to undergo simple imprisonment for 6(six) months under Section 376 IPC.

4. According to the learned counsel for the applicant, since the date of the judgment passed in Sessions Case No. 11/2023, the accused/applicant was confined in jail hazot.

5. Against the judgment and order in Sessions Case No. 11/2023, the applicant has preferred an appeal vide Criminal Appeal No. 23/2023 before the learned Sessions Judge, Hailakandi, challenging the judgment and order dated 20.07.2023 passed by the learned trial court. However, learned Sessions Judge, Hailakandi after hearing both sides set aside the impugned judgment and order dated 20.07.2023 passed by the learned trial court and remanded the matter back for fresh judgment and order.

6. It is also submitted by the learned counsel for the applicant that as the conviction of the applicant was set aside by the learned Sessions Judge, Haikandi, the applicant is entitled to be released from judicial custody as there is no conviction pending against him. It is further submitted that where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by a subordinate forum merges in the decision by the superior forum as it is the latter which subsists, remains operative and is capable of enforcement in the eye

of law.

7. In support of his submission, the learned counsel for the applicant has placed reliance on a case law- Kunhayammed & Ors. vs. State of Kerala & Anr. reported in (2000) 6 SCC 359.

8. On the other hand, Mr. R.J. Baruah, learned Additional Public prosecutor has submitted that as the revision has been admitted, the applicant may be enlarged on fresh bail with some stringent conditions.

9. I have considered the submissions made by the learned counsel for the parties.

10. It appears from the order dated 10.10.2023 passed by this Court in Criminal Revision Petition No. 442/2023 wherein the impugned order dated 21.09.2023 passed by the learned Sessions Judge, Hailakandi in Criminal Appeal No. 23/2023 remained stayed. It also appears that there is no apprehension that the applicant will abscond if he is released on bail. Nothing has been produced by the prosecution to show that the applicant was absconded during trial and will abscond during the bail period.

11. As the revision has already been admitted and the order of learned Sessions Judge, dated 21.09.2023 has been stayed, I do not find any embargo to withheld release of the applicant on bail.

12. Accordingly, the accused-applicant, named above, shall be released on bail, suspending the sentence during revision in

connection with Sessions Case No. 11/2023, under Section 448/376 IPC, subject to the following conditions :

(i) The applicant shall furnish a bail bond of Rs.25,000/- with two suitable sureties of the like amount to the satisfaction of the learned Sessions Judge, Hailakandi;

(ii) The applicant shall appear to the investigating officer of Algapur Police Station, District-Hailakandi under which he resides and provides a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switch on all the times; and

(iii) If the applicant has a passport, he shall surrender the same to the court of learned Sessions Judge, Hailakandi and shall not leave the jurisdiction without prior permission of the learned trial court.

13. In view of the above, I/A stands disposed of.

JUDGE

Comparing Assistant