

GAHC010233352022



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

Case No. : I.A.(Crl.)/742/2022

AKTAR ALI AND 2 ORS.
S/O SEKAN ALI, VILL.- MAYERCHAR, PART- I, P.S.- BILASPARA, DIST.-
DHUBI.

2: MOYNAL HOQUE
S/O SEKAN ALI

VILL.- MAYERCHAR
PART- I

P.S.- BILASPARA

DIST.- DHUBI.

3: FAJLUL HOQUE
S/O SAMSUL HOQUE

VILL.- MAYERCHAR
PART- I

P.S.- BILASPARA

DIST.- DHUBI

VERSUS

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

Advocate for the Petitioner : MR G SAIKIA

Advocate for the Respondent : PP, ASSAM

Linked Case : CrI.A./316/2022

AKTAR ALI AND 2 ORS.
S/O SEKAN ALI

VILL.- MAYERCHAR
PART- I

P.S.- BILASPARA

DIST.- DHUBI.

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P.S.- BILASPARA

DIST.- DHUBI.
VERSUS

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

Advocate for : MR. A K BHATTACHARJEE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

17.02.2023

1. Heard Mr. A.K. Bhattacharjee, learned Senior Counsel assisted by Mr. D.K. Bhattacharjee, learned counsel for the applicants as well as Mr. B. B. Gogoi, learned Addl. P.P. appearing for the State respondent.
2. The applicants, namely, Aktar Ali, Moynal Hoque, Fajlul Hoque have filed this application with prayer for bail and also with prayer for stay of operation of the impugned Judgment and order dated 17.09.2022 passed by the learned Additional Sessions Judge, Bilasipara in connection with Sessions Case No. 118/2012 convicting and sentencing A-1 under Section 376 to undergo rigorous imprisonment for 7(seven) years and pay a fine of Rs. 20,000/- with default clause and convicting and sentencing A-2 and A-3 to under Section 366/34 IPC to undergo rigorous imprisonment for 5(five) years and pay a fine of Rs. 5,000/- with default clause.
3. It is submitted on behalf of the applicants that a false case has been slammed against them. The medico legal report of the victim clearly depicts that no injuries of sexual assault were detected on examination of the victim. There is every possibility that the applicants may be acquitted and their personal liberty will be curtailed if they are incarcerated only because of the pendency of an appeal. It is also submitted that the evidence of the victim does not inspire confidence and the trial Court has erred by convicting the applicants under the aforesaid sections of law.
4. The applications have been co-operating with the trial and they were on bail during the trial as well as during investigation. The FIR, which was lodged after 5(five) days also cannot be relied upon. The evidence was not scrutinized properly by the trial Court. The appellants are local residents and they will abide by any bail conditions imposed upon them.
5. The learned Addl. P.P. has raised objections stating that the trial Court has judiciously passed the order. The evidence of the informant clearly incriminates the applicants.

6. I have given my anxious consideration to the submissions at the Bar. I have also perused the evidence on the record. The appellants are already convicted and sentenced after a trial. I would not like to get into merit of this case, at this stage of pendency of the appeal. I have carefully scrutinized the evidence and the impugned judgment.

7. At this juncture, the application stands rejected. In case there is delay in hearing the appeal, the applicants are at liberty to prefer a petition for bail. The connected appeal will be taken up for early hearing.

JUDGE

Comparing Assistant