

GAHC010234602023



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

Case No. : I.A.(CrI.)/1000/2023

TIKENDRAJIT BARUAH
S/O LT. BHORAM BARUAH, VILL.- MAJGAON, PAHUMARA, P.S.- NORTH
LAKHIMPUR, DIST.- LAKHIMPUR, ASSAM.

VERSUS

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

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

16.11.2023:-

Heard Mr. T.J. Mahanta, learned Senior Counsel, assisted by Mr. N. Borah, learned counsel for the applicant and also heard Mr. B. Sharma, learned Addl. P.P. for the state respondent.

2. This interlocutory application, u/s 389 Cr.P.C., is preferred by the applicant, namely, Shri Tikendrajit Baruah, who stood convicted under section

120B/325 IPC and sentenced to suffer rigorous imprisonment for a period of 6 years and also to pay a fine of Rs.10,000/, with default stipulation, u/s 325 IPC and also sentenced to suffer rigorous imprisonment for a period of 6 months and to pay a fine of Rs. 5000/, with default stipulation u/s 120(B) IPC, by the learned Sessions Judge, North Lakhimpur, in Sessions Case No. 30(NL) 2013, and also to release him on bail pending disposal of the appeal preferred by him. It is to be mentioned here that the applicant has preferred an appeal being Criminal Appeal No. 383/2023, which is also pending for disposal before this court.

4. Mr. T.J. Mahanta, the learned Senior Counsel for the applicant submits that the applicant stood convicted under section 325/120(B) IPC without there being any cogent evidence and sentenced to suffer rigorous imprisonment for a period of six years, which according to him is also not commensurate with the gravity of the charge. Mr. Mahanta further submits that the medical evidence of the deceased indicates that he suffered injuries on account of road traffic accident and there is no indication that the same being caused by the applicant. Further, Mr. Mahanta submits that the appeal, so preferred by the appellant, though admitted, is not ready for hearing and there is no immediate prospect of disposal of the same and that the applicant is a school teacher and a reputed person in the society, and therefore, it is contended to allow this petition.

5. Per contra, Mr. B. Sharma, the learned Addl.P.P., has vehemently opposed the petition and objected in releasing the applicant on bail. Supporting the impugned judgment and order Mr. Sharma submits that the learned court below has rightly convicted the applicant and sentenced him and the matter may be finally heard along with the appeal and therefore, Mr. Sharma has

contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record, and also I have gone through the impugned judgment.

7. While dealing with how to exercise the discretion under section 389 Cr.P.C., Hon'ble Supreme Court in ***Preet Pal Singh v. State of U.P., (2020) 8 SCC 645***, has held as under:-

“26. As the discretion under Section 389(1) is to be exercised judicially, the appellate court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in *Kashmira Singh v. State of Punjab* [*Kashmira Singh v. State of Punjab*, (1977) 4 SCC 291 : 1977 SCC (Cri) 559] and *Babu Singh v. State of U.P.* [*Babu Singh v. State of U.P.*, (1978) 1 SCC 579 : 1978 SCC (Cri) 133]”

8. In the case in hand the appeal is being admitted and the record has already been called for and notice is being issued to the respondent No.2. And neither the record has been received nor the notice has been served upon the respondent No. 2 till date. Being so, there is no immediate prospect of disposal of the appeal.

9. Further, it appears from the record that the appellant stood convicted under section 325 IPC for allegedly causing grievous hurt to the deceased over his head. But, the medical evidence speaks otherwise. The learned court below has examined Dr. Hridayananda Baruah, who had conducted autopsy on the dead body of the deceased as P.W.9, and exhibited the Post Mortem Report as Exhibit P-7. A careful perusal of the Exhibit P-7, and

the evidence of the Doctor reveals that he had found as many as four injuries on the person of the deceased and **injury No. 1**, i.e. the crash injury of the head, which had been found to be associated with extensive comminuted fracture of frontal occipital and both parietal bones, and it was suggestive of run over injury of the head by vehicular wheel and consistent with the history of hit and run as told by the attendant of the victim that occurred on 17.09.2008, at about 11 pm. The **injury No.2** was post traumatic subdural and subarachnoid hemorrhage as well as multiple contusion and lacerations had been seen in both the hemisphere of the brain, and **No.3 injury** was the ribs on right side of the chest 4th, 5th, and 6th had been fractured anteriorly and the fractured fragment had caused laceration of right lobe of the liver and the lower lobe of the right lung and lacerations of liver had caused significant intra-peritoneal hemorrhage and the **4th injury** was a transverse fracture in the sternum, approx. 5 cm below the level of the sterno clavicular joint. The cause of death of deceased, according to him was due to shock as a result of massive and traumatic intracranial hemorrhage due to excessive and wide spread injury to the brain following crash injury to the head. It is elicited in his cross-examination that such types of injuries may be caused due to motor accident takes place on a concrete road.

10. However, as per ocular evidence, the present applicant had assaulted the deceased over his head by means of iron rod. But, the medical evidence is not consistent with the eye witness account of the incident i.e. assaulting over the head of the deceased. Mr. Mahanta, the learned Senior Counsel for the applicant had rightly pointed it out and there appears to be substance in his submission. And this fact raised substantial doubt about the validity of conviction of the appellant under Section 325 of the IPC.

11. Thus, having carefully gone through the ocular evidence as well as the medical evidence, as discussed herein above this court is of the considered view that a case for granting bail to the applicant is made out.

12. In the result, I find merit in this application and accordingly the same stands allowed. Accordingly it is provided that on furnishing a bond of Rs. 50,000/, with two sureties of like amount, to the satisfaction of the learned Sessions Judge, North Lakhimpur, the applicant shall be enlarged on bail, till disposal of the Criminal Appeal No. 383/2023. In terms of above this I.A. stands disposed of.

JUDGE

Comparing Assistant