

GAHC010255102023



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

Case No. : I.A.(Crl.)/1090/2023

SATISH RAY (MANDAL) @ SATISH MANDAL @ SATISH CH RAY
S/O ANANDA MANDAL,
VILL.- KAYAKUCHI GAON, P.O.- NALIGAON, P.S.- BARPETA, DIST.-
BARPETA, ASSAM, PIN- 781352.

VERSUS

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

2:MILAN MANDAL
W/O MUNINDRA MANDAL
VILL.- KAYAKUCHI GAON
P.O.- NALIGAON P.S.- BARPETA
DIST.- BARPETA
ASSAM PIN- 781352

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 14.12.2023

(M. Zothankhuma, J.)

Heard Mr. R. Ali, learned counsel for the applicant and Ms. B. Bhuyan, learned
Addl. Public Prosecutor, Assam.

This is an application under Section 389 Cr.P.C. for suspension of the sentence passed against the applicant/appellant in relation to the impugned judgment and order dated 20.06.2023 passed by the learned Addl. Sessions Judge -cum- Special Judge (POCSO), Barpeta, in Special POCSO Case No. 66/2020, convicting the applicant under Section 6 of the POCSO Act and Section 376(AB) of the IPC. The applicant has been sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs. 10,000/-, in default, simple imprisonment for a further period of one year.

The applicant has taken many grounds for suspending the sentence and for releasing him on bail, one of them is that the evidence given by the prosecutrix was not corroborated by the evidence given by the doctor. However, the main ground urged by the applicant's counsel, at this stage, is that the applicant is suffering from stage-II cancer. He submits that in terms of the order dated 18.11.2023, passed by this Court, the Medical & Health Officer-1, District Jail Hospital, Barpeta has made a medical report dated 08.12.2023, stating that the applicant has been taking medication regularly and has been advised by FAA Medical College & Hospital, Barpeta, Department of ENT to undergo surgery. He, accordingly, prays that the applicant should be released on bail on medical ground to undergo the surgery, as advised by the Hospital.

Ms. B. Bhuyan, learned Addl. Public Prosecutor, Assam, submits that on the merits of the case, there is no ground to grant bail to the applicant. However, as the applicant has been advised to undergo surgery/operation by FAA Medical College & Hospital, Barpeta, an interim bail may be granted to enable him to undergo the said surgery and, thereafter, to report back to the jail authority. She also submits that the submission of the learned counsel for the applicant is not correct, inasmuch as, the evidence of the prosecutrix has been corroborated by the evidence of medical doctor.

We have heard the learned counsels for the parties.

The report dated 08.12.2023 made by the Medical & Health Officer-1, District Jail Hospital, Barpeta, in compliance with the order dated 18.11.2023 passed by this Court, is as follows:-

“The convict has been suffering from:-

- 1. Bethesda category II, smears shows being looking thyroid follicular cells arranged in groups as well as single dispressed. Background shows occasional cyst macrophages and colloid.*
- 2. Single firm swelling move with deglutition, approx measuring 5x4 cm and also (a) Thyroid calcification lymph node calcification (b) Degenerative changes (c) Calcific foci noted anterior to C5 and C6 vertebral body (d) Anterior marginal osteophytes noted at few vertebral level.*
- 3. Eye Visionary problem.*

The convict was sent many times to FAA Medical College & Hospital, Barpeta. Lastly Deptt. of ENT of FAA Medical College & Hospital, Barpeta advise him for surgery operation.”

As is evident from the report dated 08.12.2023, the applicant is in need of his surgery and, as such, we are of the view that the applicant needs to be released on bail for the purpose of undergoing surgery. The problem, however, arises due to the fact that the applicant has been convicted by the learned Trial Court and, as such, whether the convict can be released on bail during the pendency of an appeal without suspension of the sentence to be undergone by him.

In the case of *Gomti -vs- Thakurdas and others*, reported in *MANU/SC/1957/2007*, the Supreme Court has held that there is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the

requirement for the Appellate Court to record reasons in writing for ordering suspension of execution of the sentence. If he is in confinement, the said Court can direct that he be released on bail or on his own bond. While recording of reasons in writing, there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine. It further held that the Appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail under Section 389 Cr.P.C.

In the case of *Omprakash Sahni -vs- Jai Shankar Chaudhary and others*, reported in *MANU/SC/0511/2023*, the Supreme Court has held that suspension conveys postponement or temporarily preventing a state of affairs from continuing. Thus, when we speak suspension of sentence after conviction, the idea is to defer or postpone the execution of the sentence. The purpose of postponement of sentence cannot be achieved by detaining the convict in jail. Hence, as a natural consequence of postponement of execution, the convict may be enlarged on bail until further orders.

The Supreme Court in the case of *Vijay Kumar -vs- Narendra and others* (*MANU/SC/0477/2002*) further held that it is only in exceptional cases that the benefit of suspension of sentence can be granted. The Supreme Court in the above noted cases, thus, held that ultimately the Court would have to see as to whether the convict has fair chance of acquittal prior to suspending the sentence.

In the present case, it cannot be said that there is a fair chance of acquittal on the part of the applicant though there could be a chance for acquittal. However, the seriousness of the illness of the applicant cannot be ignored. On considering the provision of Section 389 Cr.P.C. and the prayer of bail made by the applicant, we are of the tentative view that bail cannot be granted unless the sentence is suspended. However, the issue before this Court at the moment, which needs urgent

consideration, is the fact that the applicant needs to be operated upon.

Accordingly, the application under Section 389 Cr.P.C. is allowed only for a period of 3 (three) months. Thus, we suspend the execution of sentence imposed to be undergone by the applicant, vide impugned judgment and order dated 20.06.2023 passed in Special POCSO Case No. 66/2020, for a period of 3 (three) months. The applicant is, accordingly, allowed to go on bail on furnishing a bail bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court. The above bail has been granted only on medical grounds.

The applicant should undergo the surgery within the aforesaid period of bail granted by this Court. On the expiry of the three months' interim bail period granted by this Court, which will end on 14.03.2024, the applicant should surrender before the jail authorities.

The report dated 08.12.2023 is made a part of the record and marked as Annexure-X.

Any observation or finding made in this order shall not be construed to be a final observation or finding on the merits of the case.

In terms of the above observation and direction, the I.A. is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant