

GAHC010259762022



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

Case No. : I.A.(Crl.)/815/2022

HASHEM ALI AND 4 ORS.

S/O LATE NATUB ALI, VILL.- RONGDIA, P.O.- HOWLI, P.S.- GABORDHANA,
DIST.- BAKSA, BTAD, ASSAM, PIN- 781316.

2: KASHEM ALI
S/O LATE NATUB ALI

VILL.- RONGDIA

P.O.- HOWLI

P.S.- GABORDHANA

DIST.- BAKSA
BTAD
ASSAM
PIN- 781316.

3: SAIFUL ISLAM
S/O HASEM ALI

VILL.- RONGDIA

P.O.- HOWLI

P.S.- GABORDHANA

DIST.- BAKSA
BTAD
ASSAM
PIN- 781316.

4: NURUL ISLAM
S/O LATE NATUB ALI

VILL.- RONGDIA

P.O.- HOWLI

P.S.- GABORDHANA

DIST.- BAKSA

BTAD

ASSAM

PIN- 781316.

5: NIZAMUDDIN

S/O LATE NATUB ALI

VILL.- RONGDIA

P.O.- HOWLI

P.S.- GABORDHANA

DIST.- BAKSA

BTAD

ASSAM

PIN- 781316

VERSUS

THE STATE OF ASSAM AND ANR.

REP. BY THE P.P., ASSAM.

2:REZAI KHATUN

W/O LATE AKBAR ALI TALUKDAR

VILL.- RONGDIA

P.O.- HOWLI

P.S.- GABORDHANA

DIST.- BAKSA

BTAD

ASSAM

PIN- 781316

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

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

08.02.2023

1. Heard Mr. M.U. Mahmud, learned counsel appearing for the applicants as well as Mr. B. Sarmah, learned Addl. P.P. appearing for the State respondent.
2. The applicants, namely, Hashem Ali, Kashem Ali, Saiful Islam, Nurul Islam Nizamuddin have filed an application under Section 389(1) Cr.P.C with prayer for suspension of sentence and also with prayer for bail till the disposal of the appeal.
3. I have considered the submissions at the Bar.
4. Vide order dated 30.11.2022 in connection with Sessions Case No. 139/2018 passed by the learned Sessions Judge, Baksa, the applicants were convicted under Sections 447/323/304 part-II/34 IPC. They were sentenced to rigorous imprisonment for 6 months under Section 323/34 IPC, under Section 447/34 IPC to a fine of Rs. 500/- each, and default clause and under Section 304 Part-II/34 IPC to undergo rigorous imprisonment for 5 years and a fine of Rs. 1,000/- each with default clause.
5. It is submitted on behalf of the applicants with this is a case of acquittal and it is apparent in evidence of PW-1, 2 and 20. It is submitted that the case was not proved under aforementioned sections of law. The trial court erroneously convicted the applicants and thus this is a fit case to grant bail to the applicants till the disposal of the appeal. The applicants are the sole breadwinners of their families and their family will suffer if they are behind bars. It is also submitted that there were cross cases but the cross cases were not taken together defying the guidelines of the Hon'ble Supreme Court. It is also submitted that three applicants are elderly persons.
6. Per contra, the learned Addl. P.P. has raised serious objections. This case was under Section 302 IPC but a lenient view was taken and the applicants were convicted under Section 304 Part-II IPC. The deceased was relentlessly assaulted with rod, batam etc, and

the evidence of PW-1 and 4 have clearly implicated the applicants. The learned Addl. P.P. has also submitted that the account of the eye witnesses clearly depicts that the applicants are responsible for the death of the deceased.

7. The learned counsel for the applicants have also relied on the decision of the Hon'ble Supreme Court in ***Bhagwan Rama Shinde Gosai and Others Vs. State of Gujarat (1999) SCC 4 421***, wherein, it has been held that:-

“When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.”

8. In the case of ***Bhagwan Rama Shinde Gosai and Others*** (supra) the appellants were granted bail by the Hon'ble Supreme Court because the appeal hearing was getting delayed and the High Court of judicature at Gujarat declined the prayer when the appellants made a motion for having their appeal expedited on the premises that the High Court was having older appeals on the board.

9. I have also perused the copy of the judgment and order of the trial Court in Sessions case no. 139/2018 dated 30.11.2022. 20 (Twenty) witnesses were examined by the prosecution side.

10. I have also perused the account of the eye-witnesses. The appellants were earlier booked under Section 302 IPC but they were convicted under Section 304 Part-II IPC. While

considering the petition for bail, I would not like to go the details of the merits of the case.

11. In view of my foregoing discussion, I am constrained to reject the petition under Section 389 Cr.P.C filed by the applicants at this stage.

12. However, considering the age of the applicants of Hashem Ali, who is 61 years and Kashem Ali, who is 59 years old, their prayer for bail and suspension of sentence is allowed. The applicants Hashem Ali and Kashem Ali are enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of learned trial Court and the order of conviction and sentence passed against them i.e. Hasem Ali and Kasem Ali, suspended till the disposal of the appeal.

This interlocutory application stands disposed of.

JUDGE

Comparing Assistant