

GAHC010269462022



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

Case No. : I.A.(Crl.)/106/2023

RAKESH ROY
S/O LATE NARAYAN ROY, R/O K.P. ROAD, ASHOK PATH, P.S. AND DIST.-
DIBRUGARH, ASSAM.

2: GOURI ROY
W/O LATE NARAYAN ROY

R/O K.P. ROAD
ASHOK PATH

P.S. AND DIST.- DIBRUGARH
ASSAM

VERSUS

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

2:PRABAHA DEY
D/O SUBASH CH. DEY

R/O SIGNAL COLONY
NO. 1 LINE

P.S.- MORIANI

DIST.- JORHAT
ASSAM

Advocate for the Petitioner : MR K J SAIKIA

Advocate for the Respondent : PP, ASSAM

In CRL.A. No. 46/2023

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

22-09-2023

(Kalyan Rai Surana, J)

1. Heard Mr. R.S. Mishra, learned counsel for the applicants as well as Ms. S. Jahan, learned Additional Public Prosecutor, appearing for the State of Assam.

2. By filing this application under Section 389(1) of the Code of Criminal Procedure, the applicants has prayed for suspension of sentence passed by the order dated 06.12.2022 in connection with order of conviction dated 05.12.2022 by the learned Sessions Judge, Dibrugarh in Sessions Case No. 164/2013.

3. By the said order the applicants were convicted of committing offence under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and the applicants were also convicted for convicting offence under Section 498A of the Indian Penal Code and order to undergo imprisonment for 2(two) years. In addition, the applicants were directed to pay fine for both the offence, with default stipulation.

4. The learned counsel for the applicants has submitted that there are good grounds for the connected appeal and there is every likelihood of the applicants being acquitted. Moreover, it is submitted that in so far as the applicant No. 1 is concerned, he is the sole bread earned of the family and has a minor son and other family members to look after. It is submitted that the applicant No. 2, who is the mother of the applicant No. 1, is a lady aged about

78 years and therefore, considering the age of the applicant No. 2, the prayer is made for suspending the sentence impugning the disposal of the connected appeal.

5. Ms. S. Jahan, learned Additional Public Prosecutor, has referred to the objection filed by the State in the matter and has referred to the evidence of the Circle Officer-cum-Executive Magistrate, who is examined as PW-5, and it is submitted that the said witness had recorded the dying declaration of the victim, who had implicated the applicants for the offence.

6. Learned Additional Public Prosecutor has also produced a copy of the medical-examination report of the applicant No. 2, received from the Superintendent of Central Jail, Dibrugarh, which contains the communication from the Medical & Health Officer-I, Jail Hospital of Central Jail, Dibrugarh, informing that the applicant No. 2, at the time of examination was found clinically stable and afebrile. Her BP was 130/80 mm of Hg; PR-78/min, SPO2-99 % on RA; temperature - (N)-afebrile and all other of her vital signs are within the normal limit and doing well right now. The said communication dated 22.09.2023 is retained a part of the record.

7. At this stage the Court is not inclined to evaluate the evidence, as it is seen that the applicants have been convicted on the basis of materials available in the evidence which implicates the applicants of participating in the offence of committing homicidal death of the victim, who is the wife of the applicant No. 1 and as per the learned Trial Court, there are materials to show that the victim was physically and mentally tortured for dowry, and that while the applicant No. 2 poured kerosene on the victim, she was burnt by the applicant No. 1.

8. In the light of the discussions above, notwithstanding that the

applicant No. 2, is a lady aged about 78 years, the Court is not inclined to suspend the sentence of end to grant bail to the applicants pending the disposal of the connected appeal. Accordingly, the prayer for bail is refused.

9. This application is dismissed.

JUDGE

JUDGE

Comparing Assistant