

GAHC010289752023



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

Case No. : I.A.(Crl.)/1261/2023

UPEN BASUMATARY
S/O. SANTO BASUMATARY, R/O VILL. GODABARI GAON, DIST. KARBI
ANGLONG, P.S.- DOKMOKA, ASSAM-782441

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MRS. SUSHILA BASUMATARY
W/O LATE KAMAL BASUMATARY
R/O VILL-GODABARI GAON
P.O. AND P.S.-DOKMOKA
DIST-KARBI ANGLONG
ASSAM-78244

Advocate for the Petitioner : MR D K BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM

Linked Case : CRL.A(J)/111/2018

UPEN BASUMATARY
S/O. SANTO KUMAR BASUMATARY
VILL. GODABARI GAON
P.S. DOKMOKA
DIST. KARBI ANGLONG
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP
ASSAM.

Advocate for : MR. JASADHIR DAS
(AMICUS CURIAE)
Advocate for : MS. B.BHUYAN(ADDL.PP
ASSAM) appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE MITALI THAKURIA

19/12/2023

(M.R. Pathak, J)

Heard Mr. D K Bhattacharyya, learned counsel for the applicant/appellant and Mr. R R Kaushik, learned Additional Public Prosecutor, Assam.

2. The applicant as an appellant preferred the connected CrI. Appeal (J) No. 111/2018 against the impugned judgment dated 04.06.2018 passed by the learned Sessions Judge, Karbi Anglong, Diphu, Assam in Sessions Case No. 35/2012 corresponding to G.R. Case No. 142/2012 arising out of Dokmoka P.S. Case No. 11/2012, whereby he was convicted under Section 302 IPC and was sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.2,000/- in default, Simple Imprisonment for six months.

3. By a judgment and order dated 18.12.2023 passed by a Division Bench of this Court allowed the said CrI. Appeal (J) No. 111/2018 and acquitted the applicant/appellant on the ground that the trial of the accused appellant was in contravention to the mandatory provisions as enshrined under Sections 328/329 of the Cr.P.C. that deals with the provisions of trial of the accused persons who are mentally ill/unstable.

4. While allowing the said CrI. Appeal (J) No. 111/2018, the Court by the said judgment and

order dated 18.12.2023 directed the respondents therein to release the applicant/appellant from jail and to produce him before the Mental Health Review Board constituted under the Mental Healthcare Act, 2017, who shall then examine the said applicant/appellant and take a decision with regard to the future course of action to be taken in respect of him in terms of the said 2017 Act.

5. It is contended on behalf of the applicant/appellant that it may not be possible within 24 hours from the date of the said judgment and order dated 18.12.2023 passed in Crl. Appeal (J) No. 111/2018 for the District and Sessions Judge of the Kamrup (Metro), Guwahati, i.e., the Chairman of the Mental Health Review Board to constitute the said Board and to examine the applicant/appellant and to take a decision about the future course of action to be taken in respect of him in terms of the said 2017 Act after his release from jail in terms of said judgment and order dated 18.12.2023, noted above.

6. Hence, this Interlocutory Application by the applicant/appellant praying for a direction that till such assessment of his mental health by the concerned Mental Health Review Board of Kamrup (Metro), Guwahati as provided under the Mental Healthcare Act, 2017, the applicant/appellant may be kept in the Gauhati Medical College & Hospital, Guwahati in its Psychiatric Department after his release from the Central Jail, Guwahati pursuant to the said judgment and order dated 18.12.2023 passed in Crl. Appeal (J) No. 111/2018.

7. Mr. R R Kaushik, learned Additional Public Prosecutor, Assam, on being enquired submitted that the respondents State shall have no objection with regard to such prayer of the applicant/appellant.

8. Accordingly, we direct that on being released from the Central Jail, Guwahati in terms of the judgment and order dated 18.12.2023 passed by the Court in Crl. Appeal (J) No. 111/2018, noted above, the applicant/appellant namely, Sri Upen Basumatary, be kept in the Psychiatric Department of the Gauhati Medical College & Hospital, Guwahati till the Mental Health Review Board examines the said applicant/appellant and takes a decision with regard to the future course of action to be taken in respect of him in terms of the Mental Healthcare Act, 2017 as observed by the Court in judgment and order dated 18.12.2023 passed in Crl. Appeal (J) No. 111/2018.

9. However, we make it clear that the respondent State and the authorities in the Gauhati Medical College & Hospital, Guwahati shall take all precautionary steps so that the applicant/appellant do not cause harm of any kind to the other patients undergoing treatment in the said hospital and the

attendants of such patients as well as the doctors, nurses etc. attending and taking care of the patients in the said hospital.

10. Registry shall communicate this order to the Commissioner of Police, Guwahati as well as the Superintendent of Central Jail, Guwahati and the authorities of the Gauhati Medical College & Hospital, Guwahati for their information and necessary compliance.

11. With the above observation and direction, this Interlocutory Application stands disposed of.

JUDGE

JUDGE

Comparing Assistant