

GAHC010009002024



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

Case No. : I.A.(Crl.)/53/2024

DIGANTA DAS
S/O SRI DHARESWAR DAS,
RESIDENT OF VILLAGE BIHDIA, PS NALBARI, PO KARIA, 781339, DIST
NALBARI, ASSAM

VERSUS

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

2:VICTIM
D/O SRI PRAHLAD DAS
RESIDENT OF VILLAGE NALBAI PS NALBARI
PO KARIA
781339
DIST NALBARI
ASSA

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : PP, ASSAM

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

ORDER

12.01.2024

(M. Zothankhuma, J)

Heard Mr. A Ganguly, learned counsel for the applicant. Also heard Mr. K Baishya, learned Additional Public Prosecutor, Assam.

This is an application under Section 389(1) Cr.P.C., for release of the applicant on temporary bail on humanitarian ground due to the death of his father, who expired on 16.12.2023. He submits that in the applicant's community the *shradha ceremony* is to be held after a month of the death of the applicant's father, which in this case is to be held on 19.01.2024. He accordingly prays that the applicant be released on temporary bail to enable him to attend the *shradha ceremony*.

Mr. K Baishya, learned Additional Public Prosecutor submits that he had made an enquiry from the Nalbari Police Station over telephone and found that the applicant's father had expired and accordingly a *shradha ceremony* is going to take place. He further submits that he does not have any objection to grant temporary release of the applicant for two days for attending the *shradha ceremony*.

We have heard the learned counsels for the parties.

The applicant had been convicted by the Court of the learned Special Judge (POCSO) Nalbari, vide judgment and order dated 11.11.2022 in SPL(P) Case No.15/2020, under Section 6 of the POCSO Act and sentenced to undergo simple imprisonment for 20 years and to pay a fine of Rs.30,000/-, in default simple imprisonment for 6 months.

The applicant while filing the appeal had also filed an earlier application,

being IA(CrI)19/2023 under Section 389(1) Cr.P.C., for suspending the sentence and releasing the applicant on bail. The same, however, was rejected by this Court vide order dated 15.02.2023.

The present IA(CrI) No.53/2024 has been made only on the ground that the applicant be allowed to attend the *shradha ceremony*, which is to be held on 19.01.2024.

On considering the issue involved and keeping in view the submission of the learned Additional Public Prosecutor, we are of the view that the applicant should be allowed to attend the *shradha ceremony* for a temporary period and on humanitarian ground only.

Accordingly, in the peculiar facts and circumstances of the case, we allow the applicant to be released from jail to attend the *shradha ceremony* of his father to be held on 19.01.2024. Accordingly, the learned CJM Nalbari is directed to release the applicant, namely, Diganta Das from jail, under police protection/custody, on the morning of 19.01.2024 at around 9.a.m, to enable him to attend the *shradha ceremony* of his father and he should be taken back to judicial custody by 4 p.m. on the next day i.e. on 20.01.2024.

This application is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant