

GAHC010031562024



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

Case No. : I.A.(Crl.)/299/2024

MD. ABDULLAH
S/O- LATE LOKMAN ALI, R/O- VILLAGE- TELIA CHAPARI, P.S.-RUPAHIHAT.
DISTRICT- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY LEARNED P.P. ASSAM.

2:MUST. MANJUARA BEGUM
W/O- MD. ABUL HUSSAIN
R/O- VILLAGE- TELIA CHAPARI
P.S.-RUPAHIHAT.
DISTRICT- NAGAON
ASSAM

Advocate for the Petitioner : MR. N HASAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

24.04.2024

Heard Mr. N. Hasan, learned counsel for the appellant; Ms. S.H. Bora, learned Additional Public Prosecutor, Assam for the opposite party no. 1; and Ms. S. Kakoti, learned counsel for

the opposite party no. 2.

2. The instant interlocutory application under Section 389[1], Code of Criminal Procedure, 1973 [CrPC] is preferred seeking suspension of execution of the sentence passed against the applicant in a Judgment and Order dated 03.06.2014 passed by the learned Additional Sessions Judge, FTC, Nagaon in Sessions Case no. 111/2010 and for grant of bail to the applicant.

3. The applicant as the appellant, has preferred the connected criminal appeal, Criminal Appeal no. 88/2024 under Section 374[2], Code of Criminal Procedure [CrPC], 1973 against the Judgment and Order dated 03.06.2014 passed by the learned Additional Sessions Judge, FTC, Nagaon [‘the trial court’, for short] in Sessions Case no. 111/2010. By the Judgment and Order dated 03.06.2014, the applicant-appellant has been convicted for the offences under Section 456, IPC and Section 354, IPC. For the offence under Section 456, IPC, the applicant-appellant has been sentenced to undergo rigorous imprisonment for 1 [one] year and to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo rigorous imprisonment for 2 [two] months. For the offence under Section 354, IPC, the appellant has been sentenced to undergo rigorous imprisonment for 1 [one] year. The sentences are ordered to run concurrently.

4. The connected appeal was preferred on 13.02.2024 along with an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 2743 days, which had occurred in preferring the appeal. The said application was registered as I.A.[CrI.] 169/2024. By an order dated 11.03.2024, the said application, I.A.[CrI.] 169/2024 was allowed and accordingly, the connected criminal appeal has been registered.

5. It is averred that after the Judgment and Order dated 03.06.2014, assailed in the connected criminal appeal, the learned trial court has been issuing Non-Bailable Warrants of Arrest for taking the applicant-appellant into custody. The applicant-appellant has averred that since the year 2020, he has been suffering from Cerebrovascular Accident [CVA]. When the Non-Bailable Warrant of Arrest was sought to be executed, the executing authority had

found the applicant-appellant bedridden due to left sided hemiplegia caused as a result of Cerebrovascular Accident [CVA]. A Disability Certificate dated 10.10.2023 issued by the Joint Director of Health Services, Nagaon is found annexed to the instant application. As per the said Disability Certificate, the applicant-appellant has 45% permanent disability in relation to his post Cerebrovascular Accident [CVA] residual weakness left sided limbs.

6. Having considered the above aspects and the period of the sentences which are ordered to run concurrently, this Court is of the considered view that the applicant-appellant has made out a prima facie case for suspension of execution of the sentence passed in the Judgment and Order dated 03.06.2014 by the learned trial court and to allow him to go on bail. Accordingly, the instant interlocutory application is allowed suspending the execution of the sentence passed by the learned trial court. It is ordered that the applicant-appellant shall be released on bail in the event of furnishing a bail bond of Rs. 10,000/- with one surety of the like amount to the satisfaction of the learned trial court, that is, the Court of learned Additional Sessions Judge, FTC, Nagaon.

JUDGE

Comparing Assistant