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

Case No. : I.A.(CrI.)/375/2024

ABDUL HAI MONDAL @ ABDUL HAI AND 9 ORS.
S/O MAHAJAN MONDAL, R/O SALMARA PT. VII, P.O.- JHARNERCHAR, P.S.-
SOUTH SALMARA, DIST.- DHUBRI, ASSAM.

2: BATEN ALI @ BATEN ALI MOLLAH
S/O NOWSHAD ALI MOLLAH

R/O SALMARA PT. VII

P.O.- BONDIHANA

P.S.- SOUTH SALMARA

DIST.- DHUBRI
ASSAM.

3: NOTUB ALI MONDAL @ LATIF ALI @ NATUB ALI
S/O MAHAJAN MONDAL

R/O SALMARA PT. VII

P.O.- BONDIHANA

P.S.- SOUTH SALMARA

DIST.- DHUBRI
ASSAM.

4: MOTIOR RAHMAN @ MATIOR RAHMAN @ MOTIBAR MONDAL
S/O MAHAJAN MONDAL

R/O SALMARA PT. VII

P.S.- SOUTH SALMARA

DIST.- DHUBRI
ASSAM.

5: AFZAL HOQUE @ AFJAL HOQUE MONDAL
S/O KOMAR MONDAL

R/O SALMARA PT. VII

P.O.- JHARNERCHAR

P.S.- SOUTH SALMARA

DIST.- DHUBRI
ASSAM.

6: AIZAL HOQUE @ AJIJUL @ AKARAN ALI
S/O KOMAR MONDAL

R/O SALMARA PT. VII

P.S.- SOUTH SALMARA

DIST.- DHUBRI
ASSAM.

7: HASEN ALI
S/O NATUB ALI

R/O SALMARA PT. VII

P.O.- BONDIHANA

P.S.- SOUTH SALMARA

DIST.- DHUBRI
ASSAM.

8: MAJID ALI @ ABDUL MAJID SHEIKH
S/O MOYNAL HOQUE

R/O SALMARA PT. V

P.O.- BONDIHANA

P.S.- SOUTH SALMARA

DIST.- DHUBRI

ASSAM.

9: MOKSED ALI @ MAKSHED ALI
S/O MOYNAL HOQUE

R/O SALMARA PT. V

P.S.- SOUTH SALMARA

DIST.- DHUBRI
ASSAM.

10: ADAM ALI @ ADOM ALI MOLLAH
S/O NOWSAD ALI MOLLAH
R/O SALMARA PT. VII
P.S.- SOUTH SALMARA
DIST.- DHUBRI
ASSAM

VERSUS

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

2:MD. SHAHJAHAN ALI
S/O ABDUL MAZID
R/O SALMARA PT. VIII
P.S.- SOUTH SALMARA
DIST.- DHUBRI (ASSAM)
PIN- 783349

Advocate for the Petitioner : MR. B K MAHAJAN, MR. A CHAUDHURY,MR. P K DAS,MR. N MAHAJAN,MR. D BORA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

09.12.2024

(Suman Shyam, J)

Heard Mr. B. K. Mahajan, learned counsel for the applicants/ appellants. Also

heard Ms. A. Begum, learned Addl. P.P., Assam appearing for the State.

By the judgment and order dated 02.03.2024 passed by the learned Additional Sessions Judge, Dhubri in connection with Sessions Case No.38/2009 the 10 applicants herein were convicted under Section 302 of the IPC read with Section 149 of the IPC for committing the murder of one Moynal Haque and sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs.5000/- each, in default, to suffer rigorous imprisonment for six months. All these applicants/appellants were also convicted under Section 326/149 IPC and sentenced to undergo rigorous imprisonment for three years and also to pay fine of Rs.2000/-, in default, to suffer rigorous imprisonment for two months. The applicants as appellants have preferred Criminal Appeal No.112 of 2024 against the judgment dated 02.03.2024 which is pending disposal before this Court. By filing the present I.A., the applicants have approached this Court seeking suspension of their jail sentence and for their release on bail during the pendency of the appeal.

By referring to the materials on record, Mr. Mahajan has argued that there is no evidence to convict any of the accused/appellants/ applicants in this case. However, according to Mr. Mahajan, if the evidence adduced by the prosecution witnesses are taken on their face value, even then, the key witnesses viz., PWs-2, 3 and the injured witness PW-9 have implicated only the applicant No.1, viz., Abdul Hai Mondal in this case, in as much as none of the witnesses have implicated any of the other accused persons/applicants/appellants for committing the offence under Section 302 of the IPC. Referring to the evidence on record Mr. Mahajan submits that the evidence is omnibus in nature, without giving specific particulars of involvement

of the accused persons. Moreover, the medical evidence is at variance with the ocular evidence raising a doubt as regards the involvement of all the applicants/appellants in the instant case. It is also the submission of Mr. Mahajan that even in the F.I.R. presence of none of the applicants/appellants have been indicated thus, raising a further question mark on the prosecution story. Under such circumstances, submits Mr. Mahajan, the applicants/appellants are entitled to be released on bail pending disposal of the connected appeal.

The State has filed objection opposing the prayer made in the bail application. However, Ms. A. Begum, learned Addl. P.P., Assam has submitted, in her usual fairness, that from the evidence on record, it is seen that save and except the applicant No.1, Abdul Hai Mondal, none of the other applicants have been directly implicated for commission of any offence punishable under Section 302 of the IPC.

We have considered the submissions made at the Bar and have also gone through the materials placed before us. Having considered the materials available on record, we are of the *prima facie* opinion that the evidence brought on record by the prosecution, implicates the applicant No.1 Abdul Hai Mondal for commission of the offence. In so far as the applicant No.2 viz., Baten Ali and applicant No.5, Afzal Hoque are concerned, although their names were mentioned in the F.I.R., yet, it appears that none of the witnesses have implicated them while adducing evidence before the Court. Under the circumstances, we are of the view that save and except the applicant No.1 Abdul Hai Mondal, the other 9 applicants have made out a strong *prima facie* case for their release on bail during the pendency of the appeal.

We, therefore, direct that the applicant Nos.2 to 10, viz., Baten Ali @ Baten Ali Mollah, Notub Ali Mondal @ Latif Ali @ Natub Ali, Motiur Rahman @ Matior Rahman @ Motibar Mondal, Afzal Hoque @ Afjal Hoque Mondal, Aizal Hoque @ Ajjul @ Akaran Ali, Hasen Ali, Majid Ali @ Abdul Majid Sheikh, Moksed Ali @ Makshed Ali and Adam Ali @ Adom Ali Mollah be released on bail on furnishing a bond of Rs.30,000/- each, to the satisfaction of the learned Additional Sessions Judge, Dhubri with the further condition that the 9 applicants released on bail shall not leave the jurisdiction of the learned Additional Sessions Judge, Dhubri without prior written permission and shall appear before the Court below as and when directed by the learned Additional Sessions Judge, Dhubri. The learned Additional Sessions Judge, Dhubri shall also be at liberty to impose any other additional condition(s) for release of the aforesaid nine applicants on bail. Consequently, the jail sentence of the aforesaid 9 (nine) applicants shall remain suspended until further orders. However, the bail prayer made by applicant Abdul Hai Mondal is hereby rejected.

We make it clear that the observation made herein above are tentative in nature and shall not have any bearing during the final hearing of the connected appeal.

The I.A. stands disposed of.

JUDGE

JUDGE

Comparing Assistant