

GAHC010072512024



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

Case No. : I.A.(CrI.)/334/2024

NILIKHANG WARY
S/O LATE UPEN WARY,
VILL.- MADHAYAM RUNIKHATA UNDER RUNIKHATA POLICE STATION IN
THE DISTRICT OF CHIRANG, ASSAM, PIN-

VERSUS

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

Advocate for the Petitioner : MR. A BORO

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

08.04.2024

[Manish Choudhury, J.]

Heard Mr. A. Chakraborty, learned counsel for the applicant-appellant and Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the opposite party-respondent.

2. The instant application is preferred by the applicant under Section 389, Code of Criminal

Procedure [CrPC], 1973 seeking suspension of the execution of sentence passed against him in Special [NDPS] Case no. 05/2021 by a Judgment and Order dated 25.07.2023 by the Court of learned Special Judge, Chirang and to release him on bail for a period of 20 [twenty] days temporarily.

3. The applicant as the appellant, has preferred the connected appeal, Criminal Appeal no. 310/2023 under Section 374[2], CrPC, against a Judgment and Order dated 25.07.2023 passed in Special [NDPS] Case no. 05/2021. The case, Special [NDPS] Case no. 05/2021 arose out of Runikhata Police Station Case no. 81/2020 and the applicant after trial, has been found guilty of the offence under Section 22[c] of the NDPS Act, 1985 and has been sentenced to undergo rigorous imprisonment for 10 [ten] years and to pay a fine of Rs. 50,000/-, in default of fine, to undergo further imprisonment for 6 [six] months.

4. The instant application has been preferred on the premise that the applicant's brother viz. Pradip Wary has expired on 02.04.2024 while undergoing treatment at M/s Swagat Hospital & Research Centre, Bongaigaon due to septicemia. The last rites/rituals of his brother is going to be performed at the native place situate at village – Bogribari, Police Post Office – Runikhata, Police Station – Runikhata, District – Chirang, on 09.04.2024. The applicant being the own brother of Late Pradip Wary, has sought suspension of the execution of sentence he is presently undergoing, and has prayed for his release on bail temporarily for a period of 20 [twenty] days, so that the applicant can perform the last rites/rituals of his deceased brother on 09.04.2024 and also can perform other religious rites/rituals required to be performed during the subsequent period.

5. Ms. Jahan, learned Additional Public Prosecutor has submitted that the applicant is undergoing sentence for a period of 10 [ten] years as a convict of an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 which is serious in nature, considering the fact that the applicant's own brother has expired and there is duty cast on the applicant to perform the last rites/rituals of his brother, the issue can be considered purely on humanitarian ground only.

6. From the Declaration of Death Report issued by M/s Swagat Hospital & Research Centre, Bongaigaon annexed to the application as Annexure-1, it transpires that Pradip Wary, aged about

40 years, expired on 02.04.2024 due to septicemia.

7. It has been averred that during the course of investigation, the applicant was arrested on 28.10.2020 and subsequently, he was released on bail on 06.02.2021. It has further been averred that during the trial, the applicant was on bail and has never misused the liberty granted to him.

8. In view of the projections made by the applicant that he as the brother of Late Pradip Wary, is required to perform the last rites/rituals which are to be performed on 09.04.2024, and other rites/rituals during the subsequent period, we are of the considered view that the instant application seeking suspension of the execution of sentence passed against the applicant and the prayer for his enlargement on bail for a period of 20 [twenty] days temporarily deserves to be allowed solely on humanitarian ground, without adverting to the merits. Accordingly, the execution of the sentence passed against the applicant shall remain suspended for a period of 15 [fifteen] days and the applicant shall be released on bail for a period of 15 [fifteen] days from the date of his actual release, on furnishing a personal bond of Rs. 25,000/- with a solvent surety, who shall be a close family member of the applicant of the like amount, to the satisfaction of the learned Special Judge, Chirang. On furnishing such bonds, the concerned Jail Superintendent after observing necessary formalities, shall allow the applicant to go on bail for a temporary period of 15 [fifteen] days from the date of his actual release by obtaining an undertaking from the applicant that the applicant shall surrender before the Jail Superintendent of the concerned jail on or before the expiry of 15 [fifteen] days from the date of his actual release, failing which, appropriate action against the applicant and his surety shall be initiated.

9. The interlocutory application stands disposed of accordingly.

JUDGE

JUDGE

Comparing Assistant