

GAHC010092592024



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

Case No. : I.A.(Crl.)/424/2024

DAVID BRIGHT BASUMATARY
S/O LATE SOLENDRA BASUMATARY,
R/O VILLAGE - RAMDEO, KASHIABARI, P.S.- GOSAIGAON, DISTRICT-
KOKRAJHAR.

VERSUS

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

2.:JITEN MUSHAHARY
S/O LATE ABIRAM MUSHAHARY
R/O SUENDRAPUR
P.O.-KASHIABARI
P.S.-GOSSAIGAON
DIST- KOKRAJHAR
PIN-78336

Advocate for the Petitioner : MR. A BHATTACHARYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

09.05.2024

(Suman Shyam, J)

Heard Mr. A. Bhattacharjee, learned counsel for the applicant/ appellant. Also

heard Ms. S. Jahan, learned Addl. P.P., Assam appearing for the State. None has appeared for the informant.

By the judgment and order dated 01.08.2023 passed by the learned Special Judge, POCSO, Kokrajhar in Special Case No.20/2022 the applicant herein was convicted under Section 376(2)(f) of the IPC read with Section 4 of the POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs.20,000/- with default stipulation. It appears that the applicant had faced trial from custody and therefore, he is presently also in jail. The applicant has assailed the judgment dated 01.08.2023 by filing Crl. Appeal No.412/2023 which is pending disposal before this Court.

The applicant has preferred this application under Section 389(1) of the Cr.P.C. seeking suspension of jail sentence and for granting him interim bail for 5 days so as to attend the last rites of his deceased sister-in-law, viz., Late Jinu Basumatari i.e. the wife of his younger brother, Issac Basumatary, who had expired on 29.04.2024. The applicant has stated that the last rites of Jinu Basumatary will be held on 09.05.2024 and 10.05.2024 at the residence of the husband of the deceased and therefore, the applicant be granted interim bail for a period of five days with effect from 09.04.2024 to attend the ceremony.

By referring to the statements made in the I.A., Mr. Bhattacharjee, learned counsel for the applicant submits that his client is presently lodged in the Kokrajhar District Jail. The rituals of the deceased will take place at No.2 Thakampur, Thakampur F.V., Gossaigaon, Kokrajhar at the residence of his younger brother, Issac Basumatary. Contending that the applicant is a permanent resident of Kokrajhar District and had served as the Principal of Divine Mercy School, Mr. Bhattacharjee submits that if the prayer for granting

interim bail to the applicant is allowed by this Court, then his client would not only abide by any bail condition imposed by the Court but would also surrender before the authorities on the expiry of the period of bail.

Ms. S. Jahan, learned Addl. P.P., Assam submits that she has no instructions to file objection opposing the prayer made for interim bail. The learned Addl. P.P., however, submits that since the applicant is seeking interim bail to attend the last rites of his sister-in-law, therefore, the matter is connected with the death of a close relative of the applicant. As such, she would have no objection if the Court passes appropriate order taking note of the peculiar facts and circumstances of the case.

We have noticed that the contention of the applicant, as projected in the I.A. have not been disputed by the State. Since the prayer for interim bail is for attending the rituals connected with the death of a close family member of the applicant. we are inclined to adopt a sympathetic approach in the matter. However, out of the five days mentioned in the I.A., day No.1 i.e. today (09.05.2024), would be over before the order of bail, if granted by the Court, can be implemented. As such, we are inclined to allow the prayer for interim bail of the applicant for a period of 4 (four) days only with effect from 10.05.2024.

We accordingly, direct that the applicant, viz., Shri David Bright Basumatary be released on interim bail granted in connection with Special Case No.20/2022 for 4(four) days on furnishing a bond of Rs.50,000/- and one local surety of like amount to the satisfaction of the learned Special Judge, POCSO, Kokrajhar.

The learned Special Judge, POCSO, would also be at liberty to impose any other additional condition(s) for release of the applicant on interim bail for a

period of four days with effect from 10.05.2024.

It is made clear that the applicant will surrender before the learned Special Judge, POCSO, Kokrajhar at 10:00 A.M. on 15.05.2024 and thereafter, he shall be taken back in the custody of the Jail Superintendent of Kokrajhar District Jail.

With the above observation, the I.A. stands disposed of.

JUDGE

JUDGE

Comparing Assistant